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BCUC File 59871

January 31, 2019

British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC  
V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

**Re: FortisBC Energy Inc. (FEI) and Mt. Hayes (GP) Ltd. (on behalf of Mt. Hayes Limited Partnership)**

**Application for Approvals to Reorganize the Ownership Interests in the Mt. Hayes Liquefied Natural Gas (LNG) Storage Facility**

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Attached please find an application to the British Columbia Utilities Commission (BCUC) for approvals under the *Utilities Commission Act*, necessary to restructure an existing ownership arrangement approved by the BCUC pursuant to Order G-109-11A with respect to the Mt. Hayes LNG Storage Facility located near Ladysmith, British Columbia.

### **Request for Confidential Treatment of Certain Appendices**

FEI requests that Appendices A and B be filed on a confidential basis pursuant to Section 18 of the BCUC's Rules of Practice and Procedure regarding confidential documents adopted by Order G-15-19. The information is of a commercially sensitive nature, and significant harm or prejudice to FEI's competitive or negotiating position is reasonably expected to result if the confidential information was made public.

If further information is required, please contact Justin Cha, Director, Corporate Finance and Assistant Treasurer at (604) 443-6543.

Sincerely,

**FORTISBC ENERGY INC.**  
**MT. HAYES (GP) LTD.**

***Original signed:***

Doug Slater

Attachments

cc (email only): Registered Interveners in the FEI Annual Review for 2019 Rates proceeding  
Ray Gauthier [ray.gauthier@coastsalishdevcorp.com](mailto:ray.gauthier@coastsalishdevcorp.com)  
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**MT. HAYES (GP) LTD.**



**FORTISBC ENERGY INC.**

**AND**

**MT. HAYES (GP) LTD.**

**(on behalf of Mt. Hayes Limited Partnership)**

**Application for Approvals to Reorganize  
the Ownership Interests in the Mt. Hayes  
Liquefied Natural Gas Storage Facility**

**January 31, 2019**

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## 1. INTRODUCTION

This is an application to the British Columbia Utilities Commission (BCUC) for approvals under the *Utilities Commission Act* (UCA) necessary to restructure (Proposed Restructuring) an existing ownership arrangement approved by the BCUC pursuant to Order G-109-11A with respect to the Mt. Hayes liquefied natural gas storage facility (LNG Storage Facility) near Ladysmith, British Columbia (Application).

The LNG Storage Facility is owned by a limited partnership called Mt. Hayes Limited Partnership (Mt. Hayes LP), with FortisBC Energy Inc. (FEI) as the owner of 84.999 percent of the units of the limited partnership (LP Units), and two First Nations as owners of 15 percent of the LP Units, pursuant to the existing limited partnership agreement (Existing LP Agreement). The remaining 0.001 percent interest is held by the general partner, Mt. Hayes (GP) Ltd. The LNG Storage Facility is operated by FEI, pursuant to agreements with Mt. Hayes LP, as part of its overall operations.

The Proposed Restructuring contemplates the parties to the Existing LP Agreement entering into an amended and restated limited partnership agreement (Amended and Restated LP Agreement<sup>1</sup>) and related agreements in order to create a new limited partnership unit class (Non-Voting LP Units). A Non-Voting LP Unit issued to FEI will replace the current outstanding amounts owing under the existing loan agreement (Existing Loan Agreement) and the existing grid promissory note (Existing Grid Promissory Note). Under the Proposed Restructuring the amounts owing to FEI from Mt. Hayes LP will be converted into one Non-Voting LP Unit.

The applicants are FEI and Mt. Hayes LP. As Mt. Hayes LP is a limited partnership, the Application is filed on behalf of Mt. Hayes LP by its general partner Mt. Hayes (GP) Ltd.

Pursuant to Order G-109-11A, which approved the current ownership structure:

- FEI's rates are determined on the basis that the revenue requirements of FEI be established with the LNG Storage Facility in rate base at its depreciated value, with the LNG Storage Facility assets being subject to normal depreciation and earning a normal return on rate base.
- Loans from FEI to Mt. Hayes LP, the interest payments on those loans, the repayments of principal on those loans, the rent payments from FEI to Mt. Hayes LP under the its lease, distributions from Mt. Hayes LP to its partners and any taxes paid on those distributions are to be accounted for as non-utility transactions.

This will not change as a result of the Proposed Restructuring.

<sup>1</sup> The Amended and Restated LP Agreement is provided in Confidential Appendix A, with a blacklined version as compared to the Existing LP Agreement in Confidential Appendix B.

1 The Proposed Restructuring is intended to reduce FEI's short and medium term tax burden,  
2 which will defer tax for the benefit of FEI. The tax benefit for FEI is the sole reason for the  
3 Proposed Restructuring.

4 The Proposed Restructuring will not affect the operation and use of the LNG Storage Facility by  
5 FEI to provide service to its customers, and will not affect the rates customers pay for use of the  
6 LNG Storage Facility.

7 The Proposed Restructuring will not have any impact on the partnership interests of the  
8 Chemainus Indian Band (Chemainus) and Cowichan Tribes (Cowichan) (collectively, the First  
9 Nations), who collectively hold a 15 percent equity interest in Mt. Hayes LP through LP Units.  
10 The Proposed Restructuring will not impact the amount of accounting and taxable income  
11 allocated to the First Nations under the existing ownership arrangement.

12 As part of the Proposed Restructuring, the existing Mt. Hayes facility lease agreement (Existing  
13 Facility Lease) will also require some minor amendments in a revised lease agreement  
14 (Amended and Restated Facility Lease<sup>2</sup>).

15 The concept of "amending and restating" the partnership agreement will not end the existing  
16 partnership relationship or create a new partnership relationship. The existing partnership will  
17 continue to exist, but under a changed structure effective as of the new date.

18 FEI and Mt. Hayes LP seek approvals from the BCUC that will allow the Proposed Restructuring  
19 to proceed as it will not detrimentally affect the business and operations of FEI and Mt. Hayes  
20 LP or their customers.

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<sup>2</sup> The Amended and Restated Facility Lease is provided in Appendix C, with a blacklined version as compared to the Existing Facility Lease in Appendix D.

## 2. RELIEF SOUGHT

The approvals sought in this Application represent updates to the approvals that were already granted in 2011 in respect of Mt. Hayes LP to account for the Proposed Restructuring.

FEI applies for the following from the BCUC:

1. approval for FEI to enter into the Amended and Restated Facility Lease with Mt. Hayes LP by which FEI will continue to lease the LNG Storage Facility, pursuant to section 71 of the UCA; and
2. approval, pursuant to section 54 of the UCA, of any increase in FEI's ownership interest of Mt. Hayes LP in accordance with the Amended and Restated LP Agreement.

Mt. Hayes LP applies for the following from the BCUC:

1. approval of the Amended and Restated Facility Lease with FEI as the rate that Mt. Hayes LP will charge, pursuant to section 61 of the UCA;
2. approval, pursuant to section 50 of the UCA, of the reallocation of partnership units to its partners in accordance with the Amended and Restated LP Agreement, to reflect future capital contributions to Mt. Hayes LP for capital expenditures or for an increase in the equity component of Mt. Hayes LP in consequence of an increase in the equity component of FEI;
3. approval of the ability to vary the ownership interests of its partners in accordance with the Amended and Restated LP Agreement pursuant to section 54 of the UCA; and
4. approval of future disposition of the LNG Storage Facility to FEI as provided for in the Amended and Restated Facility Lease, pursuant to section 52 of the UCA.

FEI wishes to implement the Proposed Restructuring before June 30, 2019. While FEI has received approval from Cowichan and an approval in principle from Chemainus for the changes outlined in the revised agreements, formal approvals from each limited partner will be required, if approval from the BCUC is granted.



### 3. BACKGROUND

#### 3.1 LNG STORAGE FACILITY

FEI obtained a Certificate of Public Convenience and Necessity (CPCN) to construct and operate the LNG Storage Facility by way of BCUC Order C-9-07 dated November 15, 2007. Construction of the LNG Storage Facility (primarily consisting of a 1.5 Bcf storage tank, liquefaction and vapourization equipment, and a control centre) commenced in 2008, and was completed in 2011.

#### 3.2 EXISTING LIMITED PARTNERSHIP ARRANGEMENT

By way of application to the BCUC dated January 11, 2011, FEI (then FortisBC Energy (Vancouver Island) Inc.) and Mt. Hayes LP sought approval for the First Nations' acquisition of an ownership interest in the LNG Storage Facility that would be accomplished through a transfer of beneficial ownership of the LNG Storage Facility to a limited partnership, Mt. Hayes LP, in which Chemainus and Cowichan would be limited partners holding 7.5 percent of the partnership equity each, while FEI continued to hold (directly or indirectly through the general partner) the remaining 85 percent. Mt. Hayes LP would then lease the LNG Storage Facility back to FEI.

By way of Order G-109-11A dated June 28, 2011, the BCUC approved the proposed limited partnership arrangement and related transactions.

Chemainus and Cowichan each made contributions to Mt. Hayes LP and acquired LP Units in the LNG Storage Facility as limited partners.

#### 3.3 EXISTING LP AGREEMENT AND RELATED ARRANGEMENTS

The Existing LP Agreement establishes Mt. Hayes (GP) Ltd. as the general partner. Mt. Hayes (GP) Ltd. is owned and controlled by FEI.

FEI transferred the LNG Storage Facility to Mt. Hayes LP and received back LP Units, cash and acknowledgement of a debt due to FEI by Mt. Hayes LP. Chemainus and Cowichan also provided their required equity component of Mt. Hayes LP by a cash purchase of LP Units.

To acknowledge its indebtedness to FEI in an amount equal to the debt component of its capital structure, Mt. Hayes LP executed the Existing Loan Agreement for the amount of the initial loan from FEI to Mt. Hayes LP. The Existing Grid Promissory Note, a demand promissory note provided for payment of any further amounts loaned from FEI to Mt. Hayes LP. Mt. Hayes LP and FEI also entered into a security agreement (Existing Security Agreement) providing FEI with security over the LNG Storage Facility for the amount loaned.

The Existing LP Agreement sets out the rights and obligations of the partners, including the obligation to fund ongoing capital requirements of Mt. Hayes LP (such as sustaining capital and any capital improvements required for the LNG Storage Facility). The Existing LP Agreement further provides that if a First Nation fails to fund its proportion of capital expenditures, then FEI will fund those capital requirements thereby increasing its proportional ownership of the limited partnership and diluting the proportional ownership of the partner(s) that did not fund the capital requirements.

Coincident with Mt. Hayes LP acquiring the LNG Storage Facility, Mt. Hayes LP entered into the Existing Facility Lease, a 40-year lease with FEI, by which FEI leases, and acquired the right to operate, the LNG Storage Facility.

The arrangements allow FEI, for revenue requirement and rate-making purposes, to treat the LNG Storage Facility (including additional capital expended on the LNG Storage Facility from time to time) as though it continues to be owned by FEI and is in FEI's rate base, and as though the transactions contemplated in the 2011 Limited Partnership Arrangement had not proceeded (except for the effect from some CCA claims being delayed). Therefore, the capital structure of the partnership is the same as that allowed to FEI for rate-setting purposes, with Chemainus and Cowichan each holding respectively 7.5 percent of the allowed equity component. At the time that the agreements were entered into, the allowed capital structure of FEI was 40 percent equity, to 60 percent debt. However, the capital structure for FEI is now 38.5 percent equity to 61.5 percent debt, to reflect changes in FEI's BCUC-approved capital structure.

### **3.4 PROPOSED RESTRUCTURING**

FEI is proposing to change the structure of the partnership in order to reduce FEI's short and medium term tax burden. The structural change is neutral to the First Nations. The operation and treatment of the LNG Storage Facility for revenue and rate-making purposes will also remain unchanged.

FEI has received distributions from Mt. Hayes LP since the inception of the limited partnership structure. The distributions have resulted in a negative adjusted cost base of the investment starting in 2016. This negative adjusted cost base for tax purposes has automatically triggered a deemed capital gain that has been included in taxable income and resulted in tax payable that has been borne by FEI's shareholder. It has not had any impact on FEI's customers, or the First Nations.

At the core of the Proposed Restructuring is the conversion of the debts owing by Mt. Hayes LP to FEI pursuant to the Existing Loan Agreement and Existing Grid Promissory Note into non-voting equity of the partnership. This conversion may lead to a change in the nature of the income allocated from the partnership to FEI for accounting and tax purposes but is not expected to result in a change to the total amount. The conversion will not impact the amount of accounting and taxable income allocated to the First Nations. There should also not be any

1 changes or impacts to the total cash distributions to the First Nations. All other proposed  
2 changes are ancillary or merely housekeeping in the nature.

3 FEI will continue to operate the LNG Storage Facility in the same manner as it would have been  
4 operated if none of the transactions contemplated by this Application had proceeded. FEI, on  
5 behalf of FEI customers, will continue to be responsible for all ongoing operating and  
6 maintenance expenses, including: labour, insurance and property taxes and any  
7 decommissioning liability that may arise in the future.

8 The Proposed Restructuring does not call for any change in the treatment of the LNG Storage  
9 Facility for FEI's revenue requirement and rate-making purposes. Modifications to the capital  
10 structure of Mt. Hayes LP to reflect changes in FEI's BCUC-approved capital structure will  
11 continue to occur under the Amended and Restated LP Agreement.

### 12 **3.5 FIRST NATIONS APPROVAL OF PROPOSED RESTRUCTURING**

13 FEI has discussed the Proposed Restructuring with the First Nations, and Cowichan has  
14 approved and Chemainus has agreed in principle to the changes outlined in the revised  
15 agreements. Formal internal approval from Chemainus is expected before or shortly after  
16 approval from the BCUC.

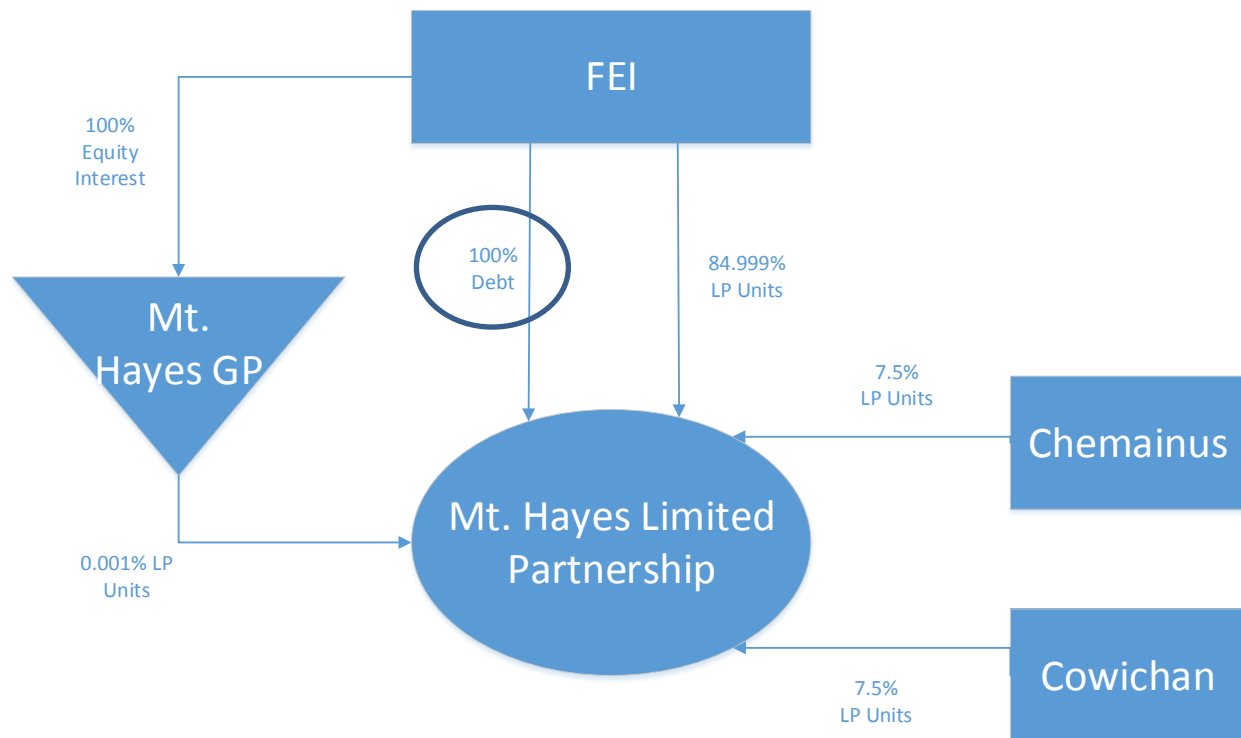
## 4. AGREEMENTS AND DOCUMENTATION

### 4.1 EXPLANATION OF THE NEW LIMITED PARTNERSHIP STRUCTURE

As described above, the Proposed Restructuring would require the creation of a new class of partnership unit to replace the existing debt portion of the capital structure. The new unit class (Non-Voting LP Units) would be non-voting, meaning the holders would not be able to participate in voting matters of the partnership. As such FEI would not gain additional control through the Proposed Restructuring. Furthermore, the distribution payment amounts for the Non-Voting LP Units are determined based on a formula which mimics the current debt and principal amounts which are calculated annually under the Existing Loan Agreement.

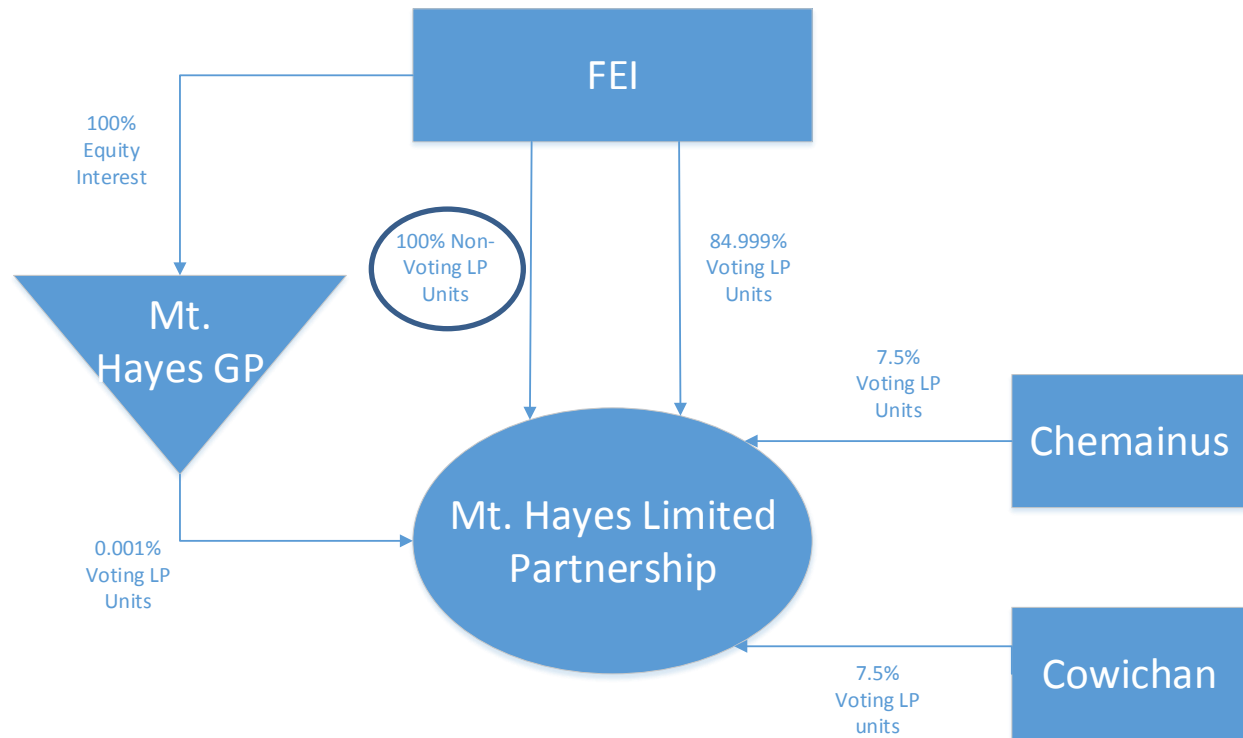
The current partnership structure is shown in Figure 4-1 below.

**Figure 4-1: Current Partnership Structure**



The partnership structure after the Proposed Reorganization is shown in Figure 4-2 below.

**Figure 4-2: Partnership Structure after Proposed Reorganization**



## 4.2 DESCRIPTION OF THE AMENDED AND RESTATED LP AGREEMENT

The Proposed Restructuring requires amendments to the Existing LP Agreement that would be made through the Amended and Restated LP Agreement, to be effective as of a date to be agreed. A draft of the Amended and Restated LP Agreement is attached as Appendix A. A blackline to the Existing LP Agreement is attached as Appendix B. Each of Chemainus, Cowichan and FEI as voting partners, and FEI as a non-voting partner, would sign the Amended and Restated LP Agreement.

The concept of “amending and restating” the Existing LP Agreement will not end the existing partnership relationship or create a new partnership relationship. The existing partnership continues to exist, but under a changed structure effective as of the new date.

Under the Amended and Restated LP Agreement, the partnership would issue to FEI the Non-Voting LP Unit, one unit of a new class of non-voting equity, in consideration for FEI being repaid all amounts owing to it under the Existing Loan Agreement and Existing Grid Promissory Note, thus extinguishing such loans. The Non-Voting Unit will be a special unit in the equity of the partnership that is designed to mimic and replace the existing loan from FEI to the partnership. In the result:

- The Non-Voting Unit is non-voting and therefore does not give FEI any more control over the partnership or a greater share of the distributions from the Voting LP units of the partnership, than it would have otherwise been entitled before the restructuring.
- The First Nations would continue as limited partners with no change in their equity ownership percentage rights or their entitlements under the existing class of voting partnership units (i.e., Voting LP Units).
- All entitlements to the share of profits and losses of the partnership, both periodically and on dissolution or liquidation will remain the same as is currently the case. Instead of receiving periodic loan payments from the partnership under the Existing Loan Agreement and the Existing Grid Promissory Note, FEI would simply receive non-voting equity distributions from the partnership as a holder of the Non-Voting LP Unit. Such distributions would be made by the partnership in priority to the distributions made on account of Voting LP Units, as is currently the case where the partnership is making periodic loan payments to FEI in priority to distributions to the current partners.

Other changes reflected in the Amended and Restated LP Agreement include:

- Sections dealing with voting rights, capital contributions, distributions to partners, allocations of income for tax and accounting purposes have been changed only to the extent necessary to reflect the conversion of the Existing Loan Agreement and Existing Grid Promissory Note into a Non-Voting LP Unit and the intent for the Non-Voting LP Unit to mimic the current loan structure;
- Certain other required updates to clarify the current capital of the partnership given the number of partnership units issued has changed since formation of the partnership as a result of capital calls and changes in FEI's regulated capital structure; and
- Certain deletions relating to the creation of and the initial contributions made by partners to the partnership, which are no longer necessary given those obligations are historical.

#### **4.2.1 General Partner (Mt. Hayes (GP) Ltd.) Rights and Obligations Remain Unchanged under Proposed Reorganization**

The general partner will continue to have unlimited liability for the debts, liabilities and obligations of Mt. Hayes LP, and will indemnify the limited partners and the partnership against any losses incurred above their capital contribution into the partnership.

The general partner will continue to have full power and authority to administer, manage and operate the partnership's business. This will include providing tax, financial, legal and regulatory and all administrative services for the partnership. The general partner will also continue to provide all accounting services, and maintain the books and records, of the partnership, including determining net income, taxable income, and determining the non-voting distributions, and distributable cash for the partnership.

The general partner will continue to determine the cash distributions that Mt. Hayes LP will make to the limited partners each year, and may withhold amounts from the distribution as reserves for projected capital expenditures. The general partner will continue to have the power to call upon the limited partners to make capital contributions for additional capital expenditures.

#### **4.2.2 Limited Partner (FEI and First Nations) Rights and Obligations Remain Unchanged under Proposed Reorganization**

The current structure of the Mt. Hayes LP is currently as follows: FEI owns 84.999 percent directly of the outstanding LP Units, and 0.001 percent of the LP Units indirectly through the Mt. Hayes GP, Chemainus owns 7.5 percent of the LP Units, and Cowichan owns 7.5 percent of the LP Units. FEI is also the debtor under the terms of the Existing Loan Agreement and the Existing Grid Promissory Note.

Under the newly proposed structure of Mt. Hayes LP, a new class of LP Units will be created, the Non-Voting LP Units, to replace the outstanding debt amounts owed to FEI. FEI will hold one such unit. The previous issued LP Units will become Voting LP Units, and the capital structure of that unit class will remain the same as the previous class of LP Units.

The liability of each of the limited partners will continue to be limited up to the capital contributions of that limited partner plus such share of undistributed income that the partner may be entitled to.

The limited partners will continue not to have the capacity to take part in the control or management of the business, bind or purport to bind the partnership, undertake any obligation or responsibility on behalf of the partnership, compel a partition, sale or other disposal in connection with any of the partnership's assets, allow a lien to be filed and remain undischarged against the interest of a partner in the partnership, or require any partnership assets to be distributed to the partners in kind.

As before, the following rights may only be exercised by special resolution of the partnership, which is 90 percent: dissolving the partnership or winding-up its affairs; subdividing the units; amending, modifying, altering or repealing any special resolution; amending the partnership agreement; changing the nature of the partnership business in a material way; disposing of all or substantially all of the assets or undertaking of the partnership (other than transfer of the assets to FEI pursuant to the terms of the lease); and approving the new admission of a new partner. Therefore, Mt. Hayes LP cannot change the nature of its business or partnership structure as presented in this Application unless FEI agrees it should change.

The limited partners will also continue to be prohibited from transferring their investment units in the partnership in any way (other than to FEI), except if approved by special resolution. Each of the First Nations will continue to have the right (put option) to require FEI to purchase its partnership units.



### **4.2.3 Capital Structure Mechanism Remains Unchanged under Proposed Reorganization**

The Amended and Restated LP Agreement will also continue to require the limited partners to adjust their capital contributions to Mt. Hayes LP to reflect any future changes to the capital structure of FEI allowed for rate-making purposes. For example, if the equity component of the capital structure of FEI is increased, then each limited partner will be required to make an additional capital contribution in an amount proportionate to its interest, in order to maintain the equity component of the capital structure of Mt. Hayes LP at a level consistent with the equity component of FEI's capital structure allowed by the BCUC. The general partner will determine what changes to the capital structure of Mt. Hayes LP are necessary to keep it consistent with the capital structure of FEI allowed for rate-making purposes.

If either Chemainus or Cowichan does not contribute its portion of the required capital when the general partner requests the contribution, then FEI, as a limited partner, will provide the capital that should have been contributed by the other limited partner. Additional partnership units in Mt. Hayes LP will be issued to the limited partners that contribute capital to the limited partnership; with the number of partnership units issued reflecting the additional capital contributions divided by the then current value of a partnership unit. The effect will be a dilution of the interest in Mt. Hayes LP of a limited partner that fails to provide capital when called on to do so, with an increase in the relative interest of FEI in the limited partnership as a result of FEI contributing the additional capital.

### **4.3 CONSEQUENTIAL CHANGES IN AMENDED AND RESTATED FACILITY LEASE**

As part of the Proposed Restructuring, the Existing Storage Facility Lease would be amended and restated to change the rent calculation formula in order to replace references to the Existing Loan Agreement with references to the Non-Voting Unit. A draft of the Amended and Restated Facility Lease is included as Appendix C. A blackline to the Existing Lease is included as Appendix D. The resulting amount of rent payable will not change following the Proposed Restructuring.

At the end of the Existing Facility Lease, FEI must reacquire the LNG Storage Facility. FEI will have the option of (i) purchasing the LNG Storage Facility's assets from Mt. Hayes LP or (ii) acquiring the Voting LP Units of Chemainus and Cowichan in Mt. Hayes LP. The purpose of FEI having the flexibility to either purchase the LNG Storage Facility assets or the limited partnership units of the First Nations reflects the uncertainty regarding income tax laws which may be in place at the time of the termination of the lease. These terms are unchanged in the Amended and Restated Facility Lease.



1 **4.4 CONSEQUENTIAL TERMINATION OF THE EXISTING LOAN AGREEMENT AND**  
2 **EXISTING GRID PROMISSORY NOTE**

3 Mt. Hayes LP's existing indebtedness under the Existing Loan Agreement and Existing Grid  
4 Promissory Note will be extinguished under the Proposed Restructuring. The amounts under  
5 these agreements are currently equal to FEI's debt component of capital structure (currently  
6 61.5 percent). Under the existing arrangement, the repayment of principal is equal to the  
7 amount of depreciation expense related to the LNG Storage Facility assets, less any amounts  
8 contributed for capital additions during the year and any additional adjustments to maintain an  
9 amount consistent with FEI's debt component of capital structure as a percentage.

10 The Existing Security Agreement granted to FEI by Mt. Hayes LP over the LNG Storage Facility  
11 will also be extinguished as part of the wind up of the Existing Loan Agreement.

## 5. BCUC APPROVAL

The approvals sought in this Application are set out in Section 2. The approvals sought from the BCUC represent updates to the approvals that were already granted in 2011 in respect of Mt. Hayes LP to account for the Proposed Restructuring. A draft form of order sought is provided in Appendix E. In the sections that follow, FEI explains the approvals sought in more detail.

### 5.1 APPROVALS RELATED TO OWNERSHIP INTERESTS

Section 54 of the UCA requires BCUC approval for changes in a “reviewable interest” in a public utility. Approval must be granted to both the public utility to permit it to recognize the change in reviewable interest, and to the person whose interest in the public utility will increase. Section 50 of the UCA requires BCUC approval for the issuance of any security. These approvals were granted by the BCUC in respect of the Existing LP Agreement; approval in respect of the Amended and Restated LP Agreement is now being sought.

Under the Amended and Restated LP Agreement, Mt. Hayes LP will continue to issue additional partnership units when its partners make additional capital contributions for capital expenditures, or if there is an increase in the equity component of the partnership. Also, as discussed above, under the Amended and Restated LP Agreement, FEI may increase its interest in Mt. Hayes LP, potentially to 100 percent.

If one or both of the First Nations fails to provide the additional capital necessary to fund a capital expenditure to be made by Mt. Hayes LP or to reflect a change in its capital structure, then FEI will provide the funding, with a resultant increase in FEI’s interest in Mt. Hayes LP (a public utility). FEI may also acquire, pursuant to the provisions of the Amended and Restated LP Agreement, the LP Units of Mt. Hayes LP owned by the First Nations.

Mt. Hayes LP seeks at this time BCUC approval, pursuant to section 50 of the UCA, for the issuance of additional partnership units in accordance with the Amended and Restated LP Agreement, and FEI and Mt. Hayes LP seek BCUC approval pursuant to section 54 of the UCA of future increases of FEI’s interest in Mt. Hayes LP, as described above, in the event that the ownership interest of FEI increases in accordance with the Amended and Restated LP Agreement.

### 5.2 APPROVALS RELATED TO AMENDED AND RESTATED FACILITY LEASE

As part of the restructuring, the Existing Storage Facility Lease would be amended and restated to in order to replace references to the rent calculation formula under the Existing Loan Agreement with references to the Non-Voting LP Unit, in accordance with the draft Amended and Restated Facility Lease enclosed as Appendix B. The resulting amount of rent payable will not change following the Proposed Restructuring.

1 Mt. Hayes LP requires BCUC approval, pursuant to section 52 of the UCA, for the transfer of the  
2 LNG Storage Facility assets back to FEI at the end of the Amended and Restated Facility  
3 Lease. Approval was granted by the BCUC with respect to the Existing Facility Lease; approval  
4 in respect of the Amended and Restated Facility Lease is now being sought.

5 As is the case with the Existing Facility Lease, at the end of the term of the Amended and  
6 Restated Facility Lease, FEI will re-acquire the LNG Storage Facility, either by FEI purchasing  
7 the assets from Mt. Hayes LP, or by FEI acquiring the partnership interests of the First Nations  
8 in Mt. Hayes LP. FEI, on behalf of customers, will continue to retain responsibility for the  
9 decommissioning of the LNG Storage Facility at the end of its useful life.

10 As part of the BCUC's approval of the Amended and Restated Facility Lease, Mt. Hayes LP and  
11 FEI also seek the BCUC's approval, under section 54 of the UCA, for a change in the ownership  
12 interests, should FEI acquire LP Units from the First Nations at any time, or should FEI's interest  
13 in Mt. Hayes LP be increased as a result of FEI providing funding for a capital expenditure if  
14 another limited partner fails to do so.

15 FEI has regarded LNG storage agreements as gas supply arrangements requiring BCUC  
16 acceptance. Accordingly, FEI is seeking approval, pursuant to section 71 of the UCA, of the  
17 Amended and Restated Facility Lease by which FEI will obtain the right to store its gas in, and  
18 operate, the LNG Storage Facility owned by Mt. Hayes LP. Approval was granted by the BCUC  
19 with respect to the Existing Facility Lease; approval in respect of the Amended and Restated  
20 Facility Lease is now being sought.

21 Mt. Hayes LP is a public utility by virtue of its acquisition of the LNG Storage Facility and is,  
22 therefore, required to file its rates with the BCUC. Mt. Hayes is seeking BCUC approval,  
23 pursuant to section 61 of the UCA, of the Amended and Restated Facility Lease as the rate it  
24 will charge FEI for the use of the LNG Storage Facility. As the lease payment under the  
25 Amended and Restated Facility Lease is formulaic, there will be no need for BCUC approval of  
26 changes to the amount of the lease payment since any such change in the amount will be in  
27 accordance with the formulaic rate approved by the BCUC in this proceeding. Approval was  
28 granted by the BCUC with respect to the Existing Facility Lease; approval in respect of the  
29 Amended and Restated Facility Lease is now being sought.

30

## 6. PROPOSED REGULATORY PROCESS

Consistent with the initial application, FEI and Mt. Hayes LP are of the view that a written regulatory review process, including one round of Information Requests and Final Submissions, is reasonable and appropriate for the BCUC's review of this Application. The applicants have included a draft form of procedural order including a proposed regulatory timetable and a draft form of BCUC Order in Appendix E of this Application.

The applicants believe that a written process is appropriate as the LNG Storage Facility will continue to be operated by FEI and will continue to be treated for FEI rate-making purposes as if it were part of FEI's rate base. There will not be an impact to FEI's customers. The Proposed Restructuring will not impact the amount of accounting and taxable income allocated to the First Nations under the existing ownership arrangement. The Proposed Restructuring is to be undertaken solely for tax purposes.

**Table 5-1: Proposed Regulatory Timetable**

Action	Date
Intervener Registration	Thursday, February 21, 2019
BCUC Information Requests No. 1	Thursday, February 28, 2019
Intervener Information Requests No. 1	Thursday, March 7, 2019
FEI Responses to Information Requests No. 1	Thursday, March 28, 2019
FEI and Mt. Hayes LP Written Final Submissions	Thursday, April 11, 2019
Intervener Written Final Submissions (if any)	Thursday, April 25, 2019
FEI and Mt. Hayes LP Written Reply Submissions	Thursday, May 9, 2019

FEI and Mt. Hayes LP respectfully seeks approval of the transactions contemplated in this Application before the end of June 2019 in order for the Proposed Restructuring to proceed.

## **7. CONCLUSION**

The transactions contemplated by this Application slightly modify the ownership structure of the LNG Storage Facility, resulting in a change in the net after tax earnings to FEI. However, the transactions contemplated in the Proposed Restructuring:

- Will not change the nature of the Chemainus and Cowichan ownership interest in the LNG Storage Facility and the return on their investment in the LNG Storage Facility. Approval and approval in principle has already been obtained from Chemainus and Cowichan, respectively;
- Will not affect the operation of the LNG Storage Facility by FEI and will not affect the use of the LNG Storage Facility by FEI to provide service to its customers; and
- Will not have any impact on the rates to be paid by the customers of FEI.

As discussed in Section 5, and elsewhere in the Application, BCUC approvals are required to allow the Proposed Restructuring and resulting reorganization to proceed.

FEI and Mt. Hayes LP seek approvals from the BCUC that will allow the Proposed Restructuring to proceed as it will not detrimentally affect the business and operations of FEI and Mt. Hayes LP or their customers.

Appendix A

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**AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT**

**FILED CONFIDENTIALLY**

Appendix B

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**BLACKLINE OF LIMITED PARTNERSHIP AGREEMENT**

**FILED CONFIDENTIALLY**

**Appendix C**

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**AMENDED AND RESTATED FACILITY LEASE**



## AMENDED AND RESTATED FACILITY LEASE

THIS LEASE is made effective as of the <@>, 2019

BETWEEN:

**FORTISBC ENERGY INC.**, a company amalgamated under the laws of British Columbia

(“FEI”)

AND:

**MT. HAYES STORAGE LIMITED PARTNERSHIP**, a limited partnership formed pursuant to the *Partnership Act* (British Columbia)

(“MHLP”)

### WHEREAS

- A. MHLP owns all of the beneficial interest in the LNG Storage Facility (as defined below) located at Mt. Hayes near Ladysmith, British Columbia; and
- B. MHLP and FEI (under its former name, FortisBC Energy (Vancouver Island) Inc.) entered into a facility lease agreement dated January 1, 2012 (the “**Initial Facility Lease**”) whereby MHLP leases the LNG Storage Facility to FEI.
- C. MHLP wishes to continue to lease the LNG Storage Facility to FEI, and FEI wishes to continue to lease the LNG Storage Facility from MHLP.
- D. The partners of MHLP have entered into an Amended and Restated Limited Partnership Agreement (the “**Partnership Agreement**”), the terms of which necessitate changes to the terms of the Initial Facility Lease.
- E. The parties wish to enter into this Agreement in order to amend, restate and supersede in its entirety the Initial Facility Lease, such that this Agreement shall govern the relationship of the parties with respect to the subject matter hereof from and after the date hereof.

**NOW THEREFORE**, in consideration of the promises, covenants and agreement set out below, the Parties agree as follows:

### ARTICLE 1 INTERPRETATION

1.1 Definitions. In this Agreement (including the Recitals):

- (a) “**AFUDC**” has the meaning set forth the section 9.3

- (b) **“Applicable Taxes”** means all harmonized sales tax and similar or other federal, provincial or local taxes in respect of the Rent payable hereunder that are to be paid by a lessee under a triple net lease arrangement, and for clarity does not include income taxes or capital taxes imposed on MHLP or FEI in respect of the Rent payable hereunder;
- (c) **“BCUC”** means the British Columbia Utilities Commission or its successor in regulatory responsibility for provincially regulated public utilities;
- (d) **“Capital Expenditures”** has the meaning set forth in section 9.2;
- (e) **“Encumbrance”** means a mortgage, pledge, hypothecation, lien or security interest created in favour of a FEI creditor in relation to the LNG Storage Facility;
- (f) **“Facility Land”** has the meaning set forth in section 8.7;
- (g) **“Facility Lease”** means this lease;
- (h) **“Fair Return Value”** means at any time the value of the assets then comprising the LNG Storage Facility that if used in the determination of FEI’s rates for natural gas service will result in FEI earning an after-tax return on equity on that value equal to the after-tax return on equity then allowed by the BCUC for the determination of FEI’s rates, provided that any amount for which MHLP is to bear the risk pursuant to section 8.4 is to be excluded from that value;
- (i) **“Force Majeure”** means a condition, cause or event that is beyond the reasonable control of a Party, including acts of God, acts of war, local or national emergencies, strikes, lockouts and other labour disputes, but excluding intentional wrongdoing or acts of negligence of the Party or any lack of money or credit by the Party;
- (j) **“Initial Facility Lease”** has the meaning given to such term in the Recitals;
- (k) **“Initial Partnership Agreement”** means the Limited Partnership Agreement relating to Mt. Hayes Storage Limited Partnership between FEI, as initial limited partner, and Mt. Hayes (GP) Ltd., as general partner, made the 4th day of January, 2011;
- (l) **“LNG Storage Facility”** means the structures, equipment, fixtures and land comprising the LNG storage facility constructed by FEI at Mt. Hayes, including:
  - (i) 1.5 Bcf LNG storage tank,
  - (ii) feed gas purification equipment,
  - (iii) liquefaction facilities (including compressors and refrigeration equipment),
  - (iv) send-out pumps and vaporization facilities,

- (v) ancillary equipment including back-up electric power generation equipment, fire protection and control equipment and onsite water storage tank,
- (vi) control centre together with control and communication equipment,
- (vii) 25 kV electric power facilities to the switches on power pole #5 adjacent to the main vehicle entrance to the LNG Storage Facility, where those facilities interconnect with the 25 kV electric power line (owned by FEI) running from a FEI substation; and
- (viii) gas pipelines to the flanges for each set of piping at the fence line at the northwest corner of the LNG Storage Facility, where those pipelines interconnect with the gas pipelines (owned by FEI) that connect to the FEI Measurement and Odourization Station;

but excluding the FEI Measurement and Odourization Station.

- (m) **“Major Expenditures”** has the meaning set forth in section 9.4;
- (n) **“Minor Expenditures”** has the meaning set forth in section 9.3;
- (o) **“Net Book Value”** means at any time the net book value of the assets then comprising the LNG Storage Facility determined by FEI in accordance with the principles used by FEI for financial reporting purposes, provided that any amount for which MHLP is to bear the risk pursuant to section 8.4 is to be excluded from that value;
- (p) **“Parties”** means MHLP and FEI and **“Party”** means either of them;
- (q) **“Partnership Agreement”** has the meaning given to such term in the Recitals;
- (r) **“Rate Base Value”** means at any time the value of the assets then comprising the LNG Storage Facility that is used in the determination of FEI’s rates for natural gas service, provided that any amount for which MHLP is to bear the risk pursuant to section 8.4 is to be excluded from that value;
- (s) **“Rent”** means the payments by FEI to MHLP for use of the LNG Storage Facility calculated in accordance with Schedule "A" and paid in arrears;
- (t) **“Revenue Requirements Impact”** has the meaning set forth in section 5.1; and
- (u) **“Term”** has the meaning set forth in section 3.1.

1.2 Interpretation. In this Facility Lease:

- (a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (b) if any date specified as a date for taking action or making payment falls on a day that is not a business day in Vancouver, BC, that action or payment may be taken or made on the next business day;

- (c) the words “include”, “includes” and “including” are to be read as if followed by the words “without limitation”; and
- (d) capitalized words and terms that are not defined in this Facility Lease but are defined in the Partnership Agreement have the meanings ascribed to them in the Partnership Agreement

1.3 Schedule. The following schedule is attached to and forms part of this Facility Lease:

Schedule A – Rent Formula

## **ARTICLE 2 LEASE**

- 2.1 Lease. MHLP hereby continues to lease the LNG Storage Facility to FEI.
- 2.2 Quiet Enjoyment. FEI is entitled to possession and quiet enjoyment of the LNG Storage Facility during the Term and subject to the terms of this Facility Lease.

## **ARTICLE 3 TERM**

- 3.1 Term. The parties acknowledge that the term of the Initial Facility Lease commenced on January 1, 2012 for a period of 40 years expiring on December 31, 2051 and the parties hereby agree that, as of the date hereof, such term (the “**Term**”) will continue under this Facility Lease unless terminated earlier in accordance with the provisions of this Facility Lease.

## **ARTICLE 4 RENT**

- 4.1 Rent. FEI will pay to MHLP the Rent and all Applicable Taxes in the manner provided for in sections 4.2 through 4.4.
- 4.2 Calculation of Payment and Statement. FEI will be responsible for calculating the Rent in the manner provided for in Schedule A and all Applicable Taxes. FEI will provide to MHLP a statement detailing the calculation of the Rent and Applicable Taxes.
- 4.3 Payment. Subject to section 13.1, FEI will pay the annual Rent and Applicable Taxes to MHLP in arrears in quarterly payments on or before the end of the month in each of March, June, September and December.
- 4.4 Place of Payment. The Rent payment together with the statement will be delivered to MHLP at its address shown in section 14.1 or to such other address as MHLP shall notify FEI.
- 4.5 Interest on Overdue Amounts. If any Rent or other amount payable by either Party to the other under this Facility Lease is not paid when due then interest shall accrue and be payable on such unpaid amount, both before and after judgment, from the due date until paid at a per annum rate of interest equal to the FEI’s average embedded rate of interest

on the Lender's debt, as may vary from time to time, used in the determination of the Lender's rates for natural gas service to FEI's customers.

## **ARTICLE 5 REVENUE REQUIREMENTS BASIS**

- 5.1 Based on FEI Revenue Requirements. The Parties acknowledge that the formula and methodology for determining the Rent is derived from return on capital (financing cost, including return on equity and income tax) and return of capital (depreciation) components included in the revenue requirements impact that the LNG Storage Facility would have had on the rates of FEI's customers if the LNG Storage Facility had continued to be owned by FEI ("**Revenue Requirements Impact**"). The Parties further acknowledge that the components of the Revenue Requirements Impact will vary from time to time, which variances will affect the amount of the Rent to be paid.
- 5.2 Adjustments. If during the Term FEI determines that a change of circumstances has or will occur (which may include an act or order of BCUC or other governmental authority or imposition of, or change in, a tax, fee, charge or expense) that may cause a Rent that is different than the Revenue Requirements Impact described in section 5.1; then FEI may advise MHLP in writing (the "**Adjustment Notice**") of proposed adjustments to the Rent calculation or other terms of this Facility Lease to cause the Rent to be equivalent to the Revenue Requirement Impact, together with supporting documentation reasonably sufficient to permit MHLP and its advisers to review. MHLP will have sixty days from receipt of the Adjustment Notice to dispute FEI's proposed adjustments by written notice. Nothing in this section 5.2 limits FEI's rights to give notice of early termination under section 11.1.
- 5.3 Implementation. If MHLP does not dispute FEI's notice, as provided for in section 5.2, then FEI's proposed adjustments will be implemented by the Parties. If MHLP disputes then the adjustments determined by the dispute resolution procedure (or as otherwise agreed between the Parties) will be implemented by the Parties. The Parties agree to make the amendments to this Facility Lease including adjusting accounts (retroactively if necessary) and making payments between them to implement the applicable adjustments.

## **ARTICLE 6 REPRESENTATIONS**

- 6.1 MHLP Representations and Warranties. MHLP represents and warrants to FEI that:
- (a) MHLP is a limited partnership duly organized and validly existing under the laws of the Province of British Columbia and has (through its general partner Mt. Hayes (GP) Ltd) the power, capacity and authority to enter into this Facility Lease and to carry out the transactions contemplated herein;
  - (b) the execution and delivery of this Facility Lease has been duly and validly authorized by all necessary action on the part of MHLP and constitutes a legal, valid and binding obligation of MHLP enforceable against it in accordance with its terms; and
  - (c) MHLP is a Canadian partnership as defined in the *Income Tax Act* (Canada).

6.2 FEI's Representations and Warranties. FEI represents and warrants to MHLP that:

- (a) FEI is a company duly organized and validly existing under the laws of the Province of British Columbia and has the power, capacity and authority to enter into this Facility Lease and to carry out the transactions contemplated herein; and
- (b) the execution and delivery of this Facility Lease has been duly and validly authorized by all necessary corporate action on the part of FEI and constitutes a legal, valid and binding obligation of FEI enforceable against it in accordance with its terms.

## **ARTICLE 7 AS-IS LEASE**

7.1 As Is. MHLP and FEI agree that the LNG Storage Facility is leased on an "as is - where is" basis. MHLP has no liability to FEI for any loss or damage suffered directly or indirectly by FEI as a result of any defect or deficiency in the LNG Storage Facility.

## **ARTICLE 8 FACILITY USE**

8.1 Use. FEI will be solely responsible for the use and operation of the LNG Storage Facility during the Term and FEI will use the LNG Storage Facility:

- (a) in accordance with all applicable laws (including environmental laws) relating to the LNG Storage Facility; and
- (b) in accordance with all applicable insurance policies.

8.2 Decommissioning. If the LNG Facility needs to be decommissioned when it has reached the end of its useful life, then FEI will be responsible for the decommissioning of, and all costs related thereto, the LNG Storage Facility during and after the Term in accordance with all applicable laws. If FEI does not exercise its option to acquire the LNG Storage Facility at the expiry or termination of this Facility Lease then FEI's responsibility for decommissioning the LNG Storage Facility, if necessary, pursuant to this section will survive this Facility Lease and MHLP hereby provides a licence to FEI and its contractor to access and conduct decommissioning work on the LNG Storage Facility and MHLP will cooperate with and provide reasonable assistance to FEI to the extent necessary for FEI to complete the decommissioning, if necessary, under this provision.

8.3 Damage to LNG Storage Facility. If the LNG Storage Facility is damaged, the damage will be repaired as soon as reasonably practical. Any expenditure required to repair the damage, or arising due to the damage, will be treated as a Capital Expenditure pursuant to sections 9.3 or 9.4.

8.4 Insurance. FEI will, at its expense, obtain and maintain in force insurance to insure both Parties in respect of comprehensive general liability risks and to insure the LNG Storage Facility to the standard that FortisBC Energy Inc. insures its similar facilities. If the LNG Storage Facility is damaged for any reason other than the negligence of FEI in the operation of the LNG Storage Facility, then to the extent any expenditure relating to repairing the damage, or arising due to the damage, to the LNG Storage Facility is not

recovered under the applicable insurance coverage (by reason of being within a deductible amount, or otherwise) and is not recoverable by FEI in rates charged to customers, MHLP will bear the risk of such damage or loss.

- 8.5 Real Property Taxes. FEI will pay real property, sewer and municipal taxes and rates or assessments that are assessed by a lawful authority against or with respect to the LNG Storage Facility.
- 8.6 FEI Encumbrances. FEI will not grant any Encumbrances against the LNG Storage Facility and will diligently defend and obtain the removal at its expense of any Encumbrances against the LNG Storage Facility caused or created by its creditors.
- 8.7 Second Tank. If FEI decides to develop a second LNG storage tank or other FEI facility on the lands on which the LNG Storage Facility is located ("the **Facility Land**"), or elsewhere in the vicinity of the LNG Storage Facility, then: (i) the Parties will fully cooperate with each other to provide for FEI's use of the portion of the Facility Land required for a second LNG storage tank or other FEI facility and not required for the LNG Storage Facility, either by the subdivision of the Facility Land and the conveyance to FEI (at no cost to FEI) or by such other means as FEI decides appropriate; and (ii) the Parties will fully cooperate with each other to facilitate the development and FEI's use, including providing access and servicing easements, integrating and shared services and facilities, development of a common control centre and common control and communication equipment, and other cooperative arrangements between them.

## **ARTICLE 9 MAINTENANCE AND CAPITAL EXPENSE PROCEDURES**

- 9.1 Maintenance. FEI will maintain the LNG Storage Facility to a standard consistent with that of FortisBC Energy Inc. in the maintenance of its similar facilities.
- 9.2 Capital Expenditures. FEI is authorized to undertake capital projects on behalf of and as agent for MHLP from time to time that FEI determines are necessary or desirable to refurbish, replace or upgrade the Facilities (collectively the "**Capital Expenditures**"). All assets comprising the Capital Expenditures will be beneficially owned by MHLP and leased to FEI without need for transfer documentation or amendments to this Facility Lease. On request FEI will provide to MHLP all documentation MHLP may reasonably request to evidence its ownership of the assets comprised in Capital Expenditures.
- 9.3 Minor Capital Expenditures. FEI will fund and then obtain reimbursement from the MHLP for the cost of Capital Expenditures having a forecast cost of less than \$1 million ("**Minor Expenditures**"). FEI will be entitled to reimbursement from MHLP for the cost of the Capital Expenditures, plus, if a capital project which as a FEI project would have attracted allowance for funds during construction ("**AFUDC**"), an amount equal to the AFUDC that would have been associated with the capital project. FEI will determine the amount in which it is to be reimbursed for Minor Expenditures once annually, at the end of each calendar year. FEI will provide MHLP with details of the Minor Expenditures, their costs, and any amount equal to AFUDC. The total amount owing to FEI as reimbursement will be set off against the Rent payable by FEI to MHLP for the quarter ending December; and if the total amount owing is greater than the Rent payable for the quarter ending December then MHLP will pay to FEI the difference within 10 days of being invoiced for the same.

- 9.4 Major Capital Expenditures. MHLP will fund all Capital Expenditures having a forecast cost greater than \$1 million (“**Major Expenditures**”) by providing that funding to FEI, which will undertake the capital project on behalf of and as agent for MHLP. FEI will provide MHLP with a budget (as it may be amended from time to time) relating to such Major Expenditures not less than 60 days prior to commencement of the Major Expenditure project. MHLP will provide sufficient funding to FEI for the budgeted cost based on the capital payment schedule indicated in FEI’s budget as it is amended from time to time. If the final cost of the Major Expenditure project differs from the budgeted cost, MHLP will be responsible for the final cost; and any differences between the final cost and the budgeted cost will be reconciled between MHLP and FEI as part of the calendar year end determination in section 9.3.

## **ARTICLE 10 DEFAULT**

- 10.1 Events of Default. A Party (the “**Defaulting Party**”) will be in default under this Facility Lease if any of the following events occur (“**Events of Default**”):
- (a) the Defaulting Party materially breaches its obligations under this Facility Lease and such breach is not cured within thirty days of written notice of such breach from the other Party (the “**Non-Defaulting Party**”), or where the time that is reasonably required by the Defaulting Party to cure the breach is longer than thirty days, the Defaulting Party does not commence efforts to cure the breach within thirty days of such notice or fails to thereafter diligently continue its efforts to cure the breach within a reasonable time; or
  - (b) the Defaulting Party makes an assignment or any general arrangement for the benefit of its creditors or files a petition or otherwise commences a proceeding under bankruptcy or similar laws for the protection of creditors, or has such petition filed against it and does not contest the same in a diligent fashion.
- 10.2 Remedies. If an Event of Default has occurred and is continuing then the Non-Defaulting Party may enforce its rights hereunder and take any action permitted by law or in equity, and such remedies will be cumulative and not alternative, and in particular the Non-Defaulting Party may proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Defaulting Party of the applicable covenants and terms of this Facility Lease or to recover damages for the breach thereof.
- 10.3 MHLP Default. If MHLP is in default or where FEI concludes in its sole discretion that MHLP is reasonably likely to default in circumstances that may jeopardize FEI’s interests under the Facility Lease or FEI’s continued use or control of the LNG Storage Facility, then FEI may deliver written notice to MHLP of termination of this Facility Lease (the “**Default Termination Notice**”). The termination of this Facility Lease will be effective on the date specified by FEI in the Default Termination Notice, which may not be less than 30 days following delivery of the Default Termination Notice. FEI may, at its option, and effective the termination date specified in the Default Termination Notice, either (i) acquire the LNG Storage Facility or (ii) acquire the limited partnership units of a limited partner of MHLP other than FEI. If FEI elects to acquire the LNG Storage Facility then the procedure outlined in sections 12.3 and 12.4 will apply. If FEI elects to acquire the limited partnership units of a limited partner of MHLP other than FEI then the provisions of the Partnership Agreement will apply. FEI’s exercise of discretion and its actions



under this section may not be disputed by MHLP or by a limited partner of MHLP under the dispute resolution provision of this Facility Lease or otherwise.

## **ARTICLE 11 EARLY TERMINATION**

11.1 Early Termination. If FEI, in its sole discretion, at any time during the Term determines that a change of circumstances has or will occur (which may include an act or order of BCUC or other governmental authority or imposition of, or change in, an accounting standard, principle or practice, or a lender requirement, or a tax, fee, charge or expense) that may cause:

- (a) its long term use of the LNG Storage Facility to be materially affected by the continuation of the Facility Lease;
- (b) the annual after tax rate of return that FEI actually achieves on its equity investment in MHLP to differ from the after tax rate of return that FEI would have been allowed by the BCUC on the equity component of the rate base represented by the LNG Storage Facility if the LNG Storage Facility had not been transferred to MHLP;
- (c) the respective benefits and obligations of the Parties under this Facility Lease, or for FEI in relation to its lenders, to be materially different than the respective benefits and obligations of the Parties under this Facility Lease, or for FEI in relation to its lenders, at the commencement of this Facility Lease;
- (d) FEI to be (i) in breach of its contractual commitments to its lenders or (ii) non-compliant with its covenants to its lenders, or may cause a restriction on FEI's ability to issue debt; where that breach, non-compliance or restriction did not exist at the commencement of this Facility Lease; or
- (e) regulatory approval of the arrangements between the Parties to be withdrawn or modified,

then FEI may deliver written notice to MHLP of early termination of this Facility Lease (the "**Early Termination Notice**"). The termination of this Facility Lease will be effective on the date specified by FEI in the Early Termination Notice, which may not be less than 30 days following delivery of the Early Termination Notice. FEI may, at its option, and effective the termination date specified in the Early Termination Notice, either (i) acquire the LNG Storage Facility or (ii) acquire the limited partnership units of a limited partner of MHLP other than FEI. If FEI elects to acquire the LNG Storage Facility then on the termination date the procedure outlined in sections 12.3 and 12.4 will apply. If FEI elects to acquire the limited partnership units of a limited partner of MHLP other than FEI then the provisions of the Partnership Agreement will apply. FEI's exercise of discretion and its actions under this section may not be disputed by MHLP or by a limited partner of MHLP under the dispute resolution provision of this Facility Lease or otherwise.

## **ARTICLE 12 FEI ACQUISITION**

- 12.1 Acquisition Option. At the expiry of the Term of this Facility Lease FEI must either acquire the LNG Storage Facility or acquire all the limited partnership units of the limited partners of MHLP other than FEI, and FEI has the option to do either. If FEI elects to acquire the limited partnership units of the limited partners of MHLP other than FEI the provisions of the Partnership Agreement will apply.
- 12.2 Acquisition Notice. If at the expiry of the Term of this Facility Lease FEI elects to acquire the LNG Storage Facility the provisions of this Article 12 will apply. FEI may notify MHLP in writing (the “**Acquisition Notice**”) of its election to exercise such option not less than 30 days prior to the end of the Term. If FEI does not deliver the Acquisition Notice to MHLP as provided for above then FEI will be deemed to have elected to exercise its option to acquire the limited partnership units of the limited partners of MHLP other than FEI under the provisions of the Partnership Agreement. The asset acquisition procedures are outlined in section 12.4
- 12.3 Asset Acquisition Amount. If the expiry of the Term of this Facility Lease is on or before December 31, 2031 then the amount FEI will pay MHLP for the LNG Storage Facility will be the Net Book Value of the assets comprising the LNG Storage Facility. If the expiry of the Term of this Facility Lease is on or after January 1, 2032 then the price FEI will pay MHLP for the LNG Storage Facility will be the lesser of Rate Base Value and Fair Return Value.
- 12.4 Acquisition Procedures. In the event FEI acquires the LNG Storage Facility as a result of termination of this Facility Lease pursuant to sections 10.3 or 11.1 or exercising its option to acquire the LNG Storage Facility under section 12.2, then the acquisition process will proceed as follows:
- (a) MHLP’s beneficial interest in the LNG Storage Facility will automatically transfer to FEI on termination or expiry of the Facility Lease and if MHLP holds a statutory right of way from FEI that right of way will be deemed cancelled and will be of no further force and effect. MHLP will, on request by FEI, execute any and all documents that may be required to evidence the transfer and the cancellation; and
  - (b) in consideration of the transfer of the beneficial ownership of the LNG Storage Facility to FEI, FEI will pay to MHLP the amount to be paid pursuant to section 12.3 as of the date of termination or expiry of the Facility Lease (as the case may be) and the final Rent payment (as prorated based on the termination or expiry date and adjusted for any capital or other monies owing between the Parties pursuant to the Facility Lease) will be paid to MHLP in exchange for a release by MHLP of all right, title and interest in the LNG Storage Facility and this Facility Lease and if MHLP holds a statutory right of way from FEI, then MHLP will provide a registerable release of that statutory right of way. The completion, payment and exchange of documents provided for will occur on the last day of the Term or early termination date, as applicable, (or such other date as the Parties may agree).

### **ARTICLE 13 FORCE MAJEURE AND DAMAGE**

- 13.1 Force Majeure Affecting Use or Operation. If (i) FEI cannot make use of the LNG Storage Facility as a result of damage to the LNG Storage Facility or as a result of Force Majeure, and if (ii) FEI suffers increased costs or decreased revenues as a result thereof; then the Rent payable by FEI will be reduced to the extent the increased costs or decreased revenues are not recovered by FEI under the applicable insurance coverage (by reason of being within a deductible amount, or otherwise) and are not recoverable by FEI in rates charged to customers for natural gas service. The Rent will also be adjusted in an appropriate manner to reflect the tax treatment applicable to FEI in respect of the decreased revenues or increased costs. The Parties will adjust the Rent payments (retroactively if necessary), to take into account the provisions of this section.
- 13.2 Damage. If the LNG Storage Facility is damaged, other than an act or omission of FEI or its employees, MHL P will be responsible for repairing the LNG Storage Facility and for the cost of repair. To the extent the damage or cost of repair is within a deductible amount of, or exceeds, the insurance coverage on the LNG Storage Facility, the amount not recoverable from insurance will be the responsibility of MHL P.

### **ARTICLE 14 GENERAL**

- 14.1 Notices. Any notice, request, authorization, direction, or other communication under this Agreement will be made given in writing and will be delivered by courier, or by facsimile transmission, properly addressed to the intended recipient as follows:

- |                  |   |
|------------------|---|
| (a) If to MHL P: | Mt. Hayes Limited Partnership<br>c/o Mt. Hayes (GP) Ltd.<br>10 <sup>th</sup> Floor, 1111 West Georgia Street<br>Vancouver, British Columbia<br>V6E 4M3<br>Attention: President<br>Facsimile: (604) 443-6562 |
| (b) If to FEI:   | FortisBC Energy Inc.<br>10 <sup>th</sup> Floor, 1111 West Georgia Street<br>Vancouver, British Columbia<br>V6E 4M3<br>Attention: President<br>Facsimile: (604) 443-6562                                     |

Either Party may change its address specified above by giving the other Party notice of such change in accordance with this section.

- 14.2 Severability. Except as otherwise stated in this Agreement, any provision or section declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over this Facility Lease, the Parties or either of them, or deemed unlawful because of statutory change, will thereupon be deemed to have been severed from this Agreement

and will not otherwise affect the lawful obligations that arise under other provisions of this Agreement.

- 14.3 Assignment. Neither Party may assign this Facility Lease without the prior written consent of the other Party, provided that FEI may assign this Facility Lease without the consent of MHLP to: (a) an entity that, directly or indirectly, controls, or is controlled by, or is under common control with FEI, or (b) an entity into which FEI is merged, amalgamated, consolidated or acquired by any process or means, provided the assignor agrees in writing to assume FEI's obligations under this Facility Lease.
- 14.4 Dispute Resolution. All disputes arising under or relating to this Agreement will, after the Parties have attempted in good faith to settle the dispute between them, be submitted to and finally determined by arbitration under the *Commercial Arbitration Act (BC)*. The arbitration will take place in Vancouver, British Columbia before a single arbitrator and will be administered by the British Columbia International Commercial Arbitration Centre in accordance with its rules.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their authorized representatives as of the date first written above with effect as of and from January 1, 2012.

**FORTISBC ENERGY INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**MT. HAYES STORAGE LIMITED PARTNERSHIP**  
by its General Partner, **MT. HAYES (GP) LTD.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

## SCHEDULE A

### RENT FORMULA

This Schedule details the method to be used to calculate the annual Rent to be paid by FEI to MHLP pursuant to section 4.3 of this Facility Lease.

- 1.1 Rent Formula. The annual Rent for the LNG Storage Facility will be calculated as follows:

$$\text{Rent} = \text{Return on Equity} + \text{Income Tax Component} + \text{Return on Capital Component} + \text{Annual Depreciation}$$

- 1.2 Elements. The elements of the Rent Formula will be determined according to the following formulas:

$$\text{Return on Equity} = \text{Asset Value} \times \text{Equity Ratio} \times \text{Allowed ROE}$$

Income Tax Component = an amount equal to the income tax that would, for the particular year, have been included by FEI in its utility revenue requirements calculations for that year to yield the Return on Equity if the assets comprising the LNG Storage Facility were the only assets owned by FEI, with the only timing/permanent differences in the calculation of income tax being those associated with the capital cost of the LNG Storage Facility (excluding any amount of depreciation associated with the potential for decommissioning), and with the capital cost allowance in the calculation of income tax being equal to the maximum capital cost allowance deductible by MHLP in respect of the LNG Storage Facility in computing its income for tax purposes for the particular year. In the foregoing, "capital cost allowance" means the amount deductible pursuant to paragraph 20(1)(a) of the *Income Tax Act* (Canada), as amended (or successor legislation).

Return on Capital Component = an amount equal to the Return on Capital for Non-Voting Units as defined and determined, from time to time, under Schedule C to the Partnership Agreement

Annual Depreciation = the aggregate depreciation expense for the year related to the Asset Value using the depreciation rates set by the BCUC from time to time for depreciation of the assets comprising the LNG Storage Facility (that is not to include a component relating to decommissioning component, as FEI will be responsible for any necessary decommissioning pursuant to section 8.2 of this Facility Lease).

- 1.3 Asset Value. The Asset Value will be the Rate Base Value, unless the Fair Return Value is less than the Rate Base Value in which event the Asset Value will be the Fair Return Value. The Asset Value will be adjusted to reflect depreciation. The Asset Value will be adjusted when a capital project that is a Major Expenditure goes into service, and the Asset Value will be adjusted at the commencement of each calendar year to reflect Minor Expenditures incurred in the preceding year. If, pursuant to section 8.4 of the Facility Lease MHLP is to bear the risk of damage or loss if the LNG Storage Facility is damaged, then to the extent MHLP is to bear that risk the Asset Value will not be

adjusted. If the LNG Storage Facility is damaged, then to the extent the cost of repairing the damage is or will be recovered under insurance coverage, the Asset Value will not be adjusted.

- 1.4 Determined by Rate Setting. The calculation of the Rent will take into account determinations and decisions made from time to time by the BCUC in the process of setting, and factors and financial information used by FEI in the process of setting FEI's rates for natural gas service to FEI's customers. Elements of the calculation that may be so affected are:
- (i) Equity Ratio – being the proportion of common equity in FEI's capital structure allowed by the BCUC, as it may vary from time to time, for purposes of determining FEI's rates for natural gas service to FEI's customers.
  - (ii) Allowed ROE – being the after tax rate of return (expressed as a percentage) on FEI's common equity allowed by the BCUC, as it may vary from time to time, for the determination of FEI's rates for natural gas service to FEI's customers.
- 1.5 Methodology Changes. If the BCUC changes, adjusts or substitutes for any of the above elements, or changes its method of determining any of the above elements, then the Parties will accordingly adjust the Rent payments (retroactively if necessary), and the calculation methodology if required, to take into account the BCUC's actions.
- 1.6 Ceasing to Set Elements. If the BCUC ceases to determine or set any of the above elements that it had previously determined or set, without substituting another element for it, so that the calculation of the Rent would otherwise be incomplete, then the method or determination that was last used by the BCUC for such element will continue to be used, unless or until the BCUC makes a further change that may then be taken into account for purposes of determining that element.

**Appendix D**

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**BLACKLINE OF FACILITY LEASE**

## AMENDED AND RESTATED FACILITY LEASE

THIS LEASE is made effective as of the ~~January 1, 2012~~ <@>, 2019

BETWEEN:

**FORTISBC ENERGY ~~(VANCOUVER ISLAND) INC.~~**, ~~(previously-~~  
~~Terasen Gas (Vancouver Island) Inc.)~~ a company  
~~incorporated~~ amalgamated under the laws of British Columbia

~~("FEVI")~~ FEI)

AND:

**MT. HAYES STORAGE LIMITED PARTNERSHIP**, a limited  
partnership formed pursuant to the *Partnership Act* (British  
Columbia)

**("MHLP")**

### WHEREAS

- A. MHLP owns all of the beneficial interest in the LNG Storage Facility (as defined below) located at Mt. Hayes near Ladysmith, British Columbia; and
- B. MHLP ~~wishes to lease~~ and FEI (under its former name, FortisBC Energy (Vancouver Island) Inc.) entered into a facility lease agreement dated January 1, 2012 (the "Initial Facility Lease") whereby MHLP leases the LNG Storage Facility to ~~FEVI~~, and ~~FEVI~~ ~~wishes to lease the LNG Storage Facility from MHLP, on the terms and conditions contained in this Facility Lease (as defined below).~~ FEI.
- C. MHLP wishes to continue to lease the LNG Storage Facility to FEI, and FEI wishes to continue to lease the LNG Storage Facility from MHLP.
- D. The partners of MHLP have entered into an Amended and Restated Limited Partnership Agreement (the "**Partnership Agreement**"), the terms of which necessitate changes to the terms of the Initial Facility Lease.
- E. The parties wish to enter into this Agreement in order to amend, restate and supersede in its entirety the Initial Facility Lease, such that this Agreement shall govern the relationship of the parties with respect to the subject matter hereof from and after the date hereof.

**NOW THEREFORE**, in consideration of the promises, covenants and agreement set out below, the Parties agree as follows:



## ARTICLE 1 INTERPRETATION

### 1.1 Definitions. In this Agreement (including the Recitals):

- (a) **"AFUDC"** has the meaning set forth the section 9.3
- (b) **"Applicable Taxes"** means all harmonized sales tax and similar or other federal, provincial or local taxes in respect of the Rent payable hereunder that are to be paid by a lessee under a triple net lease arrangement, and for clarity does not include income taxes or capital taxes imposed on MHLP or ~~FEVI~~FEI in respect of the Rent payable hereunder;
- (c) **"BCUC"** means the British Columbia Utilities Commission or its successor in regulatory responsibility for provincially regulated public utilities;
- (d) **"Capital Expenditures"** has the meaning set forth in section 9.2;
- (e) **"Encumbrance"** means a mortgage, pledge, hypothecation, lien or security interest created in favour of a ~~FEVI~~FEI creditor in relation to the LNG Storage Facility;
- (f) **"Facility Land"** has the meaning set forth in section 8.7;
- (g) **"Facility Lease"** means this lease;
- (h) **"Fair Return Value"** means at any time the value of the assets then comprising the LNG Storage Facility that if used in the determination of ~~FEVI~~FEI's rates for natural gas service will result in ~~FEVI~~FEI earning an after-tax return on equity on that value equal to the after-tax return on equity then allowed by the BCUC for the determination of ~~FEVI~~FEI's rates, provided that any amount for which MHLP is to bear the risk pursuant to section 8.4 is to be excluded from that value;
- (i) **"Force Majeure"** means a condition, cause or event that is beyond the reasonable control of a Party, including acts of God, acts of war, local or national emergencies, strikes, lockouts and other labour disputes, but excluding intentional wrongdoing or acts of negligence of the Party or any lack of money or credit by the Party;
- (j) **"Initial Facility Lease"** has the meaning given to such term in the Recitals;
- (k) **"Initial Partnership Agreement"** means the Limited Partnership Agreement relating to Mt. Hayes Storage Limited Partnership between FEI, as initial limited partner, and Mt. Hayes (GP) Ltd., as general partner, made the 4th day of January, 2011;
- (l) ~~(j)~~ **"LNG Storage Facility"** means the structures, equipment, fixtures and land comprising the LNG storage facility constructed by ~~FEVI~~FEI at Mt. Hayes, including:

- (i) 1.5 Bcf LNG storage tank,
- (ii) feed gas purification equipment,
- (iii) liquefaction facilities (including compressors and refrigeration equipment),
- (iv) send-out pumps and vaporization facilities,
- (v) ancillary equipment including back-up electric power generation equipment, fire protection and control equipment and onsite water storage tank,
- (vi) control centre together with control and communication equipment,
- (vii) 25 kV electric power facilities to the switches on power pole #5 adjacent to the main vehicle entrance to the LNG Storage Facility, where those facilities interconnect with the 25 kV electric power line (owned by FEVI/FEI) running from a FEVI/FEI substation; and
- (viii) gas pipelines to the flanges for each set of piping at the fence line at the northwest corner of the LNG Storage Facility, where those pipelines interconnect with the gas pipelines (owned by FEVI/FEI) that connect to the FEVI/FEI Measurement and Odourization Station;

but excluding the FEVI/FEI Measurement and Odourization Station.

- (m) ~~(k)~~ **“Major Expenditures”** has the meaning set forth in section 9.4;
- (n) ~~(j)~~ **“Minor Expenditures”** has the meaning set forth in section 9.3;
- (o) ~~(m)~~ **“Net Book Value”** means at any time the net book value of the assets then comprising the LNG Storage Facility determined by FEVI/FEI in accordance with the principles used by FEVI/FEI for financial reporting purposes, provided that any amount for which MHLP is to bear the risk pursuant to section 8.4 is to be excluded from that value;
- (p) ~~(n)~~ **“Parties”** means MHLP and FEVI/FEI and **“Party”** means either of them;
- (q) ~~(o)~~ **“Partnership Agreement”** ~~means the Limited Partnership Agreement relating to Mt. Hayes Storage Limited Partnership between FEVI, as initial limited partner, and Mt. Hayes (GP) Ltd., as general partner, made the 4th day of January, 2011;~~ has the meaning given to such term in the Recitals;
- (r) ~~(p)~~ **“Rate Base Value”** means at any time the value of the assets then comprising the LNG Storage Facility that is used in the determination of FEVI/FEI's rates for natural gas service, provided that any amount for which MHLP is to bear the risk pursuant to section 8.4 is to be excluded from that value;

(s) ~~(e)~~ “**Rent**” means the payments by ~~FEVI~~FEI to MHLP for use of the LNG Storage Facility calculated in accordance with Schedule "A" and paid in arrears;

(t) ~~(+)~~ “**Revenue Requirements Impact**” has the meaning set forth in section 5.1; and

(u) ~~(s)~~ “**Term**” has the meaning set forth in section 3.1.

1.2 Interpretation. In this Facility Lease:

- (a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (b) if any date specified as a date for taking action or making payment falls on a day that is not a business day in Vancouver, BC, that action or payment may be taken or made on the next business day;
- (c) the words “include”, “includes” and “including” are to be read as if followed by the words “without limitation”; and
- (d) capitalized words and terms that are not defined in this Facility Lease but are defined in the Partnership Agreement have the meanings ascribed to them in the Partnership Agreement

1.3 Schedule. The following schedule is attached to and forms part of this Facility Lease:

Schedule A – Rent Formula

**ARTICLE 2  
LEASE**

2.1 Lease. MHLP hereby ~~leases~~continues to lease the LNG Storage Facility to ~~FEVI~~FEI.

2.2 Quiet Enjoyment. ~~FEVI~~FEI is entitled to possession and quiet enjoyment of the LNG Storage Facility during the Term and subject to the terms of this Facility Lease.

**ARTICLE 3  
TERM**

3.1 Term. The parties acknowledge that the term of ~~this~~the Initial Facility Lease ~~(the “Term”) will commence~~commenced on January 1, 2012 ~~and continue~~ for a period of 40 years expiring on December 31, 2051 and the parties hereby agree that, as of the date hereof, such term (the “Term”) will continue under this Facility Lease unless terminated earlier in accordance with the provisions of this Facility Lease.

**ARTICLE 4  
RENT**

4.1 Rent. ~~FEVI~~FEI will pay to MHLP the Rent and all Applicable Taxes in the manner provided for in sections 4.2 through 4.4.

- 4.2 Calculation of Payment and Statement. FEVI/FEI will be responsible for calculating the Rent in the manner provided for in Schedule A and all Applicable Taxes. FEVI/FEI will provide to MHLP a statement detailing the calculation of the Rent and Applicable Taxes.
- 4.3 Payment. Subject to section 13.1, FEVI/FEI will pay the annual Rent and Applicable Taxes to MHLP in arrears in quarterly payments on or before the end of the month in each of March, June, September and December.
- 4.4 Place of Payment. The Rent payment together with the statement will be delivered to MHLP at its address shown in section 14.1 or to such other address as MHLP shall notify FEVI/FEI.
- 4.5 Interest on Overdue Amounts. If any Rent or other amount payable by either Party to the other under this Facility Lease is not paid when due then interest shall accrue and be payable on such unpaid amount, both before and after judgment, from the due date until paid at a per annum rate of interest equal to the FEVI/FEI's average embedded rate of interest on the Lender's debt, as may vary from time to time, used in the determination of the Lender's rates for natural gas service to FEI's customers ~~on Vancouver Island.~~

## ARTICLE 5 REVENUE REQUIREMENTS BASIS

- 5.1 Based on FEVI/FEI Revenue Requirements. The Parties acknowledge that the formula and methodology for determining the Rent is derived from return on capital (financing cost, including return on equity and income tax) and return of capital (depreciation) components included in the revenue requirements impact that the LNG Storage Facility would have had on the rates of FEVI/FEI's customers ~~on Vancouver Island~~ if the LNG Storage Facility had continued to be owned by FEVI/FEI ("**Revenue Requirements Impact**"). The Parties further acknowledge that the components of the Revenue Requirements Impact will vary from time to time, which variances will affect the amount of the Rent to be paid.
- 5.2 Adjustments. If during the Term FEVI/FEI determines that a change of circumstances has or will occur (which may include an act or order of BCUC or other governmental authority or imposition of, or change in, a tax, fee, charge or expense) that may cause a Rent that is different than the Revenue Requirements Impact described in section 5.1; then FEVI/FEI may advise MHLP in writing (the "**Adjustment Notice**") of proposed adjustments to the Rent calculation or other terms of this Facility Lease to cause the Rent to be equivalent to the Revenue Requirement Impact, together with supporting documentation reasonably sufficient to permit MHLP and its advisers to review. MHLP will have sixty days from receipt of the Adjustment Notice to dispute FEVI/FEI's proposed adjustments by written notice. Nothing in this section 5.2 limits FEVI/FEI's rights to give notice of early termination under section 11.1.
- 5.3 Implementation. If MHLP does not dispute FEVI/FEI's notice, as provided for in section 5.2, then FEVI/FEI's proposed adjustments will be implemented by the Parties. If MHLP disputes then the adjustments determined by the dispute resolution procedure (or as otherwise agreed between the Parties) will be implemented by the Parties. The Parties

agree to make the amendments to this Facility Lease including adjusting accounts (retroactively if necessary) and making payments between them to implement the applicable adjustments.

## **ARTICLE 6 REPRESENTATIONS**

- 6.1 MHLP Representations and Warranties. MHLP represents and warrants to ~~FEVIFEI~~ that:
- (a) MHLP is a limited partnership duly organized and validly existing under the laws of the Province of British Columbia and has (through its general partner Mt. Hayes (GP) Ltd) the power, capacity and authority to enter into this Facility Lease and to carry out the transactions contemplated herein;
  - (b) the execution and delivery of this Facility Lease has been duly and validly authorized by all necessary action on the part of MHLP and constitutes a legal, valid and binding obligation of MHLP enforceable against it in accordance with its terms; and
  - (c) MHLP is a Canadian partnership as defined in the *Income Tax Act* (Canada).
- 6.2 ~~FEVIFEI~~'s Representations and Warranties. ~~FEVIFEI~~ represents and warrants to MHLP that:
- (a) ~~FEVIFEI~~ is a company duly organized and validly existing under the laws of the Province of British Columbia and has the power, capacity and authority to enter into this Facility Lease and to carry out the transactions contemplated herein; and
  - (b) the execution and delivery of this Facility Lease has been duly and validly authorized by all necessary corporate action on the part of ~~FEVIFEI~~ and constitutes a legal, valid and binding obligation of ~~FEVIFEI~~ enforceable against it in accordance with its terms.

## **ARTICLE 7 AS-IS LEASE**

- 7.1 As Is. MHLP and ~~FEVIFEI~~ agree that the LNG Storage Facility is leased on an "as is - where is" basis. MHLP has no liability to ~~FEVIFEI~~ for any loss or damage suffered directly or indirectly by ~~FEVIFEI~~ as a result of any defect or deficiency in the LNG Storage Facility.

## **ARTICLE 8 FACILITY USE**

- 8.1 Use. ~~FEVIFEI~~ will be solely responsible for the use and operation of the LNG Storage Facility during the Term and ~~FEVIFEI~~ will use the LNG Storage Facility:
- (a) in accordance with all applicable laws (including environmental laws) relating to the LNG Storage Facility; and

(b) in accordance with all applicable insurance policies.

- 8.2 Decommissioning. If the LNG Facility needs to be decommissioned when it has reached the end of its useful life, then FEVI~~FEI~~ will be responsible for the decommissioning of, and all costs related thereto, the LNG Storage Facility during and after the Term in accordance with all applicable laws. If FEVI~~FEI~~ does not exercise its option to acquire the LNG Storage Facility at the expiry or termination of this Facility Lease then FEVI~~FEI~~'s responsibility for decommissioning the LNG Storage Facility, if necessary, pursuant to this section will survive this Facility Lease and MHLP hereby provides a licence to FEVI~~FEI~~ and its contractor to access and conduct decommissioning work on the LNG Storage Facility and MHLP will cooperate with and provide reasonable assistance to FEVI~~FEI~~ to the extent necessary for FEVI~~FEI~~ to complete the decommissioning, if necessary, under this provision.
- 8.3 Damage to LNG Storage Facility. If the LNG Storage Facility is damaged, the damage will be repaired as soon as reasonably practical. Any expenditure required to repair the damage, or arising due to the damage, will be treated as a Capital Expenditure pursuant to sections 9.3 or 9.4.
- 8.4 Insurance. FEVI~~FEI~~ will, at its expense, obtain and maintain in force insurance to insure both Parties in respect of comprehensive general liability risks and to insure the LNG Storage Facility to the standard that FortisBC Energy Inc. insures its similar facilities. If the LNG Storage Facility is damaged for any reason other than the negligence of FEVI~~FEI~~ in the operation of the LNG Storage Facility, then to the extent any expenditure relating to repairing the damage, or arising due to the damage, to the LNG Storage Facility is not recovered under the applicable insurance coverage (by reason of being within a deductible amount, or otherwise) and is not recoverable by FEVI~~FEI~~ in rates charged to customers, MHLP will bear the risk of such damage or loss.
- 8.5 Real Property Taxes. FEVI~~FEI~~ will pay real property, sewer and municipal taxes and rates or assessments that are assessed by a lawful authority against or with respect to the LNG Storage Facility.
- 8.6 FEVI~~FEI~~ Encumbrances. FEVI~~FEI~~ will not grant any Encumbrances against the LNG Storage Facility and will diligently defend and obtain the removal at its expense of any Encumbrances against the LNG Storage Facility caused or created by its creditors.
- 8.7 Second Tank. If FEVI~~FEI~~ decides to develop a second LNG storage tank or other FEVI~~FEI~~ facility on the lands on which the LNG Storage Facility is located ("the **Facility Land**"), or elsewhere in the vicinity of the LNG Storage Facility, then: (i) the Parties will fully cooperate with each other to provide for FEVI~~FEI~~'s use of the portion of the Facility Land required for a second LNG storage tank or other FEVI~~FEI~~ facility and not required for the LNG Storage Facility, either by the subdivision of the Facility Land and the conveyance to FEVI~~FEI~~ (at no cost to FEVI~~FEI~~) or by such other means as FEVI~~FEI~~ decides appropriate; and (ii) the Parties will fully cooperate with each other to facilitate the development and FEVI~~FEI~~'s use, including providing access and servicing easements, integrating and shared services and facilities, development of a common control centre and common control and communication equipment, and other cooperative arrangements between them.

## ARTICLE 9 MAINTENANCE AND CAPITAL EXPENSE PROCEDURES

- 9.1 Maintenance. FEVI/FEI will maintain the LNG Storage Facility to a standard consistent with that of FortisBC Energy Inc. in the maintenance of its similar facilities.
- 9.2 Capital Expenditures. FEVI/FEI is authorized to undertake capital projects on behalf of and as agent for MHLP from time to time that FEVI/FEI determines are necessary or desirable to refurbish, replace or upgrade the Facilities (collectively the “**Capital Expenditures**”). All assets comprising the Capital Expenditures will be beneficially owned by MHLP and leased to FEVI/FEI without need for transfer documentation or amendments to this Facility Lease. On request FEVI/FEI will provide to MHLP all documentation MHLP may reasonably request to evidence its ownership of the assets comprised in Capital Expenditures.
- 9.3 Minor Capital Expenditures. FEVI/FEI will fund and then obtain reimbursement from the MHLP for the cost of Capital Expenditures having a forecast cost of less than \$1 million (“**Minor Expenditures**”). FEVI/FEI will be entitled to reimbursement from MHLP for the cost of the Capital Expenditures, plus, if a capital project which as a FEVI/FEI project would have attracted allowance for funds during construction (“**AFUDC**”), an amount equal to the AFUDC that would have been associated with the capital project. FEVI/FEI will determine the amount in which it is to be reimbursed for Minor Expenditures once annually, at the end of each calendar year. FEVI/FEI will provide MHLP with details of the Minor Expenditures, their costs, and any amount equal to AFUDC. The total amount owing to FEVI/FEI as reimbursement will be set off against the Rent payable by FEVI/FEI to MHLP for the quarter ending December; and if the total amount owing is greater than the Rent payable for the quarter ending December then MHLP will pay to FEVI/FEI the difference within 10 days of being invoiced for the same.
- 9.4 Major Capital Expenditures. MHLP will fund all Capital Expenditures having a forecast cost greater than \$1 million (“**Major Expenditures**”) by providing that funding to FEVI/FEI, which will undertake the capital project on behalf of and as agent for MHLP. FEVI/FEI will provide MHLP with a budget (as it may be amended from time to time) relating to such Major Expenditures not less than 60 days prior to commencement of the Major Expenditure project. MHLP will provide sufficient funding to FEVI/FEI for the budgeted cost based on the capital payment schedule indicated in FEVI/FEI’s budget as it is amended from time to time. If the final cost of the Major Expenditure project differs from the budgeted cost, MHLP will be responsible for the final cost; and any differences between the final cost and the budgeted cost will be reconciled between MHLP and FEVI/FEI as part of the calendar year end determination in section 9.3.

## ARTICLE 10 DEFAULT

- 10.1 Events of Default. A Party (the “**Defaulting Party**”) will be in default under this Facility Lease if any of the following events occur (“**Events of Default**”):
- (a) the Defaulting Party materially breaches its obligations under this Facility Lease and such breach is not cured within thirty days of written notice of such breach from the other Party (the “**Non-Defaulting Party**”), or where the time that is



reasonably required by the Defaulting Party to cure the breach is longer than thirty days, the Defaulting Party does not commence efforts to cure the breach within thirty days of such notice or fails to thereafter diligently continue its efforts to cure the breach within a reasonable time; or

- (b) the Defaulting Party makes an assignment or any general arrangement for the benefit of its creditors or files a petition or otherwise commences a proceeding under bankruptcy or similar laws for the protection of creditors, or has such petition filed against it and does not contest the same in a diligent fashion.

10.2 Remedies. If an Event of Default has occurred and is continuing then the Non-Defaulting Party may enforce its rights hereunder and take any action permitted by law or in equity, and such remedies will be cumulative and not alternative, and in particular the Non-Defaulting Party may proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Defaulting Party of the applicable covenants and terms of this Facility Lease or to recover damages for the breach thereof.

10.3 MHLP Default. If MHLP is in default or where ~~FEVIFEI~~ concludes in its sole discretion that MHLP is reasonably likely to default in circumstances that may jeopardize ~~FEVIFEI~~'s interests under the Facility Lease or ~~FEVIFEI~~'s continued use or control of the LNG Storage Facility, then ~~FEVIFEI~~ may deliver written notice to MHLP of termination of this Facility Lease (the "**Default Termination Notice**"). The termination of this Facility Lease will be effective on the date specified by ~~FEVIFEI~~ in the Default Termination Notice, which may not be less than 30 days following delivery of the Default Termination Notice. ~~FEVIFEI~~ may, at its option, and effective the termination date specified in the Default Termination Notice, either (i) acquire the LNG Storage Facility or (ii) acquire the limited partnership units of a limited partner of MHLP other than ~~FEVIFEI~~. If ~~FEVIFEI~~ elects to acquire the LNG Storage Facility then the procedure outlined in sections 12.3 and 12.4 will apply. If ~~FEVIFEI~~ elects to acquire the limited partnership units of a limited partner of MHLP other than ~~FEVIFEI~~ then the provisions of the Partnership Agreement will apply. ~~FEVIFEI~~'s exercise of discretion and its actions under this section may not be disputed by MHLP or by a limited partner of MHLP under the dispute resolution provision of this Facility Lease or otherwise.

## ARTICLE 11 EARLY TERMINATION

11.1 Early Termination. If ~~FEVIFEI~~, in its sole discretion, at any time during the Term determines that a change of circumstances has or will occur (which may include an act or order of BCUC or other governmental authority or imposition of, or change in, an accounting standard, principle or practice, or a lender requirement, or a tax, fee, charge or expense) that may cause:

- (a) its long term use of the LNG Storage Facility to be materially affected by the continuation of the Facility Lease;
- (b) the annual after tax rate of return that ~~FEVIFEI~~ actually achieves on its equity investment in MHLP to differ from the after tax rate of return that ~~FEVIFEI~~ would



have been allowed by the BCUC on the equity component of the rate base represented by the LNG Storage Facility if the LNG Storage Facility had not been transferred to MHLF;

- (c) the respective benefits and obligations of the Parties under this Facility Lease, or for FEVIFEI in relation to its lenders, to be materially different than the respective benefits and obligations of the Parties under this Facility Lease, or for FEVIFEI in relation to its lenders, at the commencement of this Facility Lease;
- (d) FEVIFEI to be (i) in breach of its contractual commitments to its lenders or (ii) non-compliant with its covenants to its lenders, or may cause a restriction on FEVIFEI's ability to issue debt; where that breach, non-compliance or restriction did not exist at the commencement of this Facility Lease; or
- (e) regulatory approval of the arrangements between the Parties to be withdrawn or modified,

then FEVIFEI may deliver written notice to MHLF of early termination of this Facility Lease (the "**Early Termination Notice**"). The termination of this Facility Lease will be effective on the date specified by FEVIFEI in the Early Termination Notice, which may not be less than 30 days following delivery of the Early Termination Notice. FEVIFEI may, at its option, and effective the termination date specified in the Early Termination Notice, either (i) acquire the LNG Storage Facility or (ii) acquire the limited partnership units of a limited partner of MHLF other than FEVIFEI. If FEVIFEI elects to acquire the LNG Storage Facility then on the termination date the procedure outlined in sections 12.3 and 12.4 will apply. If FEVIFEI elects to acquire the limited partnership units of a limited partner of MHLF other than FEVIFEI then the provisions of the Partnership Agreement will apply. FEVIFEI's exercise of discretion and its actions under this section may not be disputed by MHLF or by a limited partner of MHLF under the dispute resolution provision of this Facility Lease or otherwise.

## ARTICLE 12 FEVIFEI ACQUISITION

- 12.1 Acquisition Option. At the expiry of the Term of this Facility Lease FEVIFEI must either acquire the LNG Storage Facility or acquire all the limited partnership units of the limited partners of MHLF other than FEVIFEI, and FEVIFEI has the option to do either. If FEVIFEI elects to acquire the limited partnership units of the limited partners of MHLF other than FEVIFEI the provisions of the Partnership Agreement will apply.
- 12.2 Acquisition Notice. If at the expiry of the Term of this Facility Lease FEVIFEI elects to acquire the LNG Storage Facility the provisions of this Article 12 will apply. FEVIFEI may notify MHLF in writing (the "**Acquisition Notice**") of its election to exercise such option not less than 30 days prior to the end of the Term. If FEVIFEI does not deliver the Acquisition Notice to MHLF as provided for above then FEVIFEI will be deemed to have elected to exercise its option to acquire the limited partnership units of the limited partners of MHLF other than FEVIFEI under the provisions of the Partnership Agreement. The asset acquisition procedures are outlined in section 12.4
- 12.3 Asset Acquisition Amount. If the expiry of the Term of this Facility Lease is on or before December 31, 2031 then the amount FEVIFEI will pay MHLF for the LNG

Storage Facility will be the Net Book Value of the assets comprising the LNG Storage Facility. If the expiry of the Term of this Facility Lease is on or after January 1, 2032 then the price FEVI/FEI will pay MHLP for the LNG Storage Facility will be the lesser of Rate Base Value and Fair Return Value.

- 12.4 Acquisition Procedures. In the event FEVI/FEI acquires the LNG Storage Facility as a result of termination of this Facility Lease pursuant to sections 10.3 or 11.1 or exercising its option to acquire the LNG Storage Facility under section 12.2, then the acquisition process will proceed as follows:
- (a) MHLP's beneficial interest in the LNG Storage Facility will automatically transfer to FEVI/FEI on termination or expiry of the Facility Lease and if MHLP holds a statutory right of way from FEVI/FEI that right of way will be deemed cancelled and will be of no further force and effect. MHLP will, on request by FEVI/FEI, execute any and all documents that may be required to evidence the transfer and the cancellation; and
  - (b) in consideration of the transfer of the beneficial ownership of the LNG Storage Facility to FEVI/FEI, FEVI/FEI will pay to MHLP the amount to be paid pursuant to section 12.3 as of the date of termination or expiry of the Facility Lease (as the case may be) and the final Rent payment (as prorated based on the termination or expiry date and adjusted for any capital or other monies owing between the Parties pursuant to the Facility Lease) will be paid to MHLP in exchange for a release by MHLP of all right, title and interest in the LNG Storage Facility and this Facility Lease and if MHLP holds a statutory right of way from FEVI/FEI, then MHLP will provide a registerable release of that statutory right of way. The completion, payment and exchange of documents provided for will occur on the last day of the Term or early termination date, as applicable, (or such other date as the Parties may agree).

### ARTICLE 13 FORCE MAJEURE AND DAMAGE

- 13.1 Force Majeure Affecting Use or Operation. If (i) FEVI/FEI cannot make use of the LNG Storage Facility as a result of damage to the LNG Storage Facility or as a result of Force Majeure, and if (ii) FEVI/FEI suffers increased costs or decreased revenues as a result thereof; then the Rent payable by FEVI/FEI will be reduced to the extent the increased costs or decreased revenues are not recovered by FEVI/FEI under the applicable insurance coverage (by reason of being within a deductible amount, or otherwise) and are not recoverable by FEVI/FEI in rates charged to customers for natural gas service. The Rent will also be adjusted in an appropriate manner to reflect the tax treatment applicable to FEVI/FEI in respect of the decreased revenues or increased costs. The Parties will adjust the Rent payments (retroactively if necessary), to take into account the provisions of this section.
- 13.2 Damage. If the LNG Storage Facility is damaged, other than an act or omission of FEVI/FEI or its employees, MHLP will be responsible for repairing the LNG Storage Facility and for the cost of repair. To the extent the damage or cost of repair is within a deductible amount of, or exceeds, the insurance coverage on the LNG Storage Facility, the amount not recoverable from insurance will be the responsibility of MHLP.

## ARTICLE 14 GENERAL

14.1 Notices. Any notice, request, authorization, direction, or other communication under this Agreement will be made given in writing and will be delivered by courier, or by facsimile transmission, properly addressed to the intended recipient as follows:

- (a) If to MHLP:
- Mt. Hayes Limited Partnership  
c/o Mt. Hayes (GP) Ltd.  
~~16705 Fraser Highway~~  
~~Surrey, B.C. V4N 0E8~~[10<sup>th</sup> Floor, 1111 West Georgia Street](#)  
[Vancouver, British Columbia](#)  
[V6E 4M3](#)  
Attention: President  
Facsimile: (604) 443-6562
- (b) If to ~~FEVI~~[FEI](#):
- FortisBC Energy ~~(Inc.~~  
[10<sup>th</sup> Floor, 1111 West Georgia Street](#)  
Vancouver ~~Island) Inc.~~  
~~c/o Mt. Hayes (GP) Ltd.~~  
~~16705 Fraser Highway~~  
~~Surrey, B.C. V4N 0E8~~, [British Columbia](#)  
[V6E 4M3](#)  
Attention: President  
Facsimile: (604) 443-6562

Either Party may change its address specified above by giving the other Party notice of such change in accordance with this section.

- 14.2 Severability. Except as otherwise stated in this Agreement, any provision or section declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over this Facility Lease, the Parties or either of them, or deemed unlawful because of statutory change, will thereupon be deemed to have been severed from this Agreement and will not otherwise affect the lawful obligations that arise under other provisions of this Agreement.
- 14.3 Assignment. Neither Party may assign this Facility Lease without the prior written consent of the other Party, provided that ~~FEVI~~[FEI](#) may assign this Facility Lease without the consent of MHLP to: (a) an entity that, directly or indirectly, controls, or is controlled by, or is under common control with ~~FEVI~~[FEI](#), or (b) an entity into which ~~FEVI~~[FEI](#) is merged, amalgamated, consolidated or acquired by any process or means, provided the assignor agrees in writing to assume ~~FEVI~~[FEI](#)'s obligations under this Facility Lease.
- 14.4 Dispute Resolution. All disputes arising under or relating to this Agreement will, after the Parties have attempted in good faith to settle the dispute between them, be submitted to and finally determined by arbitration under the *Commercial Arbitration Act (BC)*. The arbitration will take place in Vancouver, British Columbia before a single

arbitrator and will be administered by the British Columbia International Commercial Arbitration Centre in accordance with its rules.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their authorized representatives as of the date first written above with effect as of and from January 1, 2012.

**FORTISBC ENERGY (~~VANCOUVER ISLAND~~)  
LTD INC.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**MT. HAYES STORAGE LIMITED PARTNERSHIP**  
by its General Partner, **MT. HAYES (GP) LTD.**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

## SCHEDULE A

### RENT FORMULA

This Schedule details the method to be used to calculate the annual Rent to be paid by ~~FEVI~~FEI to MHLP pursuant to section 4.3 of this Facility Lease.

- 1.1 Rent Formula. The annual Rent for the LNG Storage Facility will be calculated as follows:

Rent = Return on Equity + Income Tax Component + ~~Lease-Interest~~Return on Capital Component + Annual Depreciation

- 1.2 Elements. The elements of the Rent Formula will be determined according to the following formulas:

Return on Equity = Asset Value x Equity Ratio x Allowed ROE

Income Tax Component = an amount equal to the income tax that would, for the particular year, have been included by ~~FEVI~~FEI in its utility revenue requirements calculations for that year to yield the Return on Equity if the assets comprising the LNG Storage Facility were the only assets owned by ~~FEVI~~FEI, with the only timing/permanent differences in the calculation of income tax being those associated with the capital cost of the LNG Storage Facility (excluding any amount of depreciation associated with the potential for decommissioning), and with the capital cost allowance in the calculation of income tax being equal to the maximum capital cost allowance deductible by MHLP in respect of the LNG Storage Facility in computing its income for tax purposes for the particular year. In the foregoing, "capital cost allowance" means the amount deductible pursuant to paragraph 20(1)(a) of the *Income Tax Act* (Canada), as amended (or successor legislation).

~~Lease-Interest~~Return on Capital Component = ~~the aggregate of the Interest Components, each an amount equal to the Return on Capital for Non-Voting Units as defined and determined, from time to time, under (a) Schedule C to the Loan Agreement between MHLP and FEVI dated effective as of January 1, 2012, and (b) the Grid Promissory Note issued by MHLP in favour of FEVI, as amended from time to time.~~Partnership Agreement

Annual Depreciation = the aggregate depreciation expense for the year related to the Asset Value using the depreciation rates set by the BCUC from time to time for depreciation of the assets comprising the LNG Storage Facility (that is not to include a component relating to decommissioning component, as ~~FEVI~~FEI will be responsible for any necessary decommissioning pursuant to section 8.2 of this Facility Lease).

- 1.3 Asset Value. The Asset Value will be the Rate Base Value, unless the Fair Return Value is less than the Rate Base Value in which event the Asset Value will be the Fair Return Value. The Asset Value will be adjusted to reflect depreciation. The Asset Value will be adjusted when a capital project that is a Major Expenditure goes into

service, and the Asset Value will be adjusted at the commencement of each calendar year to reflect Minor Expenditures incurred in the preceding year. If, pursuant to section 8.4 of the Facility Lease MHL P is to bear the risk of damage or loss if the LNG Storage Facility is damaged, then to the extent MHL P is to bear that risk the Asset Value will not be adjusted. If the LNG Storage Facility is damaged, then to the extent the cost of repairing the damage is or will be recovered under insurance coverage, the Asset Value will not be adjusted.

- 1.4 Determined by Rate Setting. The calculation of the Rent will take into account determinations and decisions made from time to time by the BCUC in the process of setting, and factors and financial information used by FEVI/FEI in the process of setting FEVI/FEI's rates for natural gas service to FEI's customers ~~on Vancouver Island~~. Elements of the calculation that may be so affected are:
- (i) Equity Ratio – being the proportion of common equity in FEVI/FEI's capital structure allowed by the BCUC, as it may vary from time to time, for purposes of determining FEVI/FEI's rates for natural gas service to FEI's customers ~~on Vancouver Island~~.
  - (ii) Allowed ROE – being the after tax rate of return (expressed as a percentage) on FEVI/FEI's common equity allowed by the BCUC, as it may vary from time to time, for the determination of FEVI/FEI's rates for natural gas service to FEI's customers ~~on Vancouver Island~~.
- 1.5 Methodology Changes. If the BCUC changes, adjusts or substitutes for any of the above elements, or changes its method of determining any of the above elements, then the Parties will accordingly adjust the Rent payments (retroactively if necessary), and the calculation methodology if required, to take into account the BCUC's actions.
- 1.6 Ceasing to Set Elements. If the BCUC ceases to determine or set any of the above elements that it had previously determined or set, without substituting another element for it, so that the calculation of the Rent would otherwise be incomplete, then the method or determination that was last used by the BCUC for such element will continue to be used, unless or until the BCUC makes a further change that may then be taken into account for purposes of determining that element.

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**Appendix E**  
**DRAFT ORDERS**



**ORDER NUMBER**

**G-xx-xx**

**IN THE MATTER OF**

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc. and Mt. Hayes (GP) Ltd. as General Partner on behalf of Mt. Hayes Storage Limited Partnership

An Application for Approvals to Reorganize the Ownership Interests in the Liquefied Natural Gas Storage Facility at Mt. Hayes, near Ladysmith, British Columbia

**BEFORE:**

[Panel Chair]  
Commissioner  
Commissioner

on **Date**

**ORDER**

**WHEREAS:**

- A. On January 31, 2019, FortisBC Energy Inc. (FEI) and Mt. Hayes (GP) Ltd., as general partner on behalf of Mt. Hayes Storage Limited Partnership (Mt. Hayes LP) submitted an application (the Application) to the British Columbia Utilities Commission (the BCUC) for approvals under Sections 50, 52, 54, 61 and 71 of the *Utilities Commission Act* (the UCA) to reorganize the limited partnership arrangement (Proposed Reorganization) of Mt. Hayes LP, the beneficial owner of the Liquefied Natural Gas Storage Facility (LNG Storage Facility) located at Mt. Hayes, near Ladysmith, British Columbia;
- B. The Proposed Reorganization in the Application represents a modification of the limited partnership arrangement for Mt. Hayes LP approved by the BCUC in Order G-109-11A;
- C. A copy of the Application was provided to registered interveners in FEI's Annual Review for 2019 delivery rates proceeding;
- D. FEI and Mt. Hayes LP state that the transactions proposed in the Application will not affect the operation and use of the LNG Storage Facility by FEI to provide service to its customers, will not affect the rates customers pay for the LNG Storage Facility, and will not change the nature of the existing First Nations ownership interests in Mt. Hayes LP; and
- E. The BCUC has commenced the review of the Application and considers that a regulatory timetable should be established.



**NOW THEREFORE** the BCUC orders as follows:

1. The establishment of a public hearing process in accordance with the Regulatory Timetable, as set out in Appendix A to this order.
2. The Application, together with any supporting materials, will be available for inspection at FEI Office, 16705 Fraser Highway, Surrey, BC, V4N 0E8. The Application and supporting materials also will be available on the FortisBC website at [www.fortisbc.com](http://www.fortisbc.com) and on the BCUC website at [www.bcuc.com](http://www.bcuc.com).
3. Interveners who wish to participate in the regulatory proceeding are to register with the BCUC by completing a Request to Intervene Form, available on the BCUC's website at <http://www.bcuc.com/Registration-Intervener-1.aspx> by the date established in the Regulatory Timetable attached as Appendix A to this order and in accordance with the BCUC's Rules of Practice and Procedure adopted by Order G-15-19.

**DATED** at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)  
Commissioner

Attachment

FortisBC Energy Inc. and Mt. Hayes (GP) Ltd. as General Partner on behalf of Mt. Hayes Storage Limited Partnership

Application for Approvals to Reorganize the Ownership Interests in the Liquefied Natural Gas Storage Facility at Mt. Hayes, near Ladysmith, British Columbia

### **REGULATORY TIMETABLE**

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Action	Date (2019)
Intervener Registration	Thursday, February 21, 2019
BCUC Information Requests No. 1	Thursday, February 28, 2019
Intervener Information Requests No. 1	Thursday, March 7, 2019
FEI Responses to Information Requests No. 1	Thursday, March 28, 2019
FEI and Mt. Hayes LP Written Final Submissions	Thursday, April 11, 2019
Intervener Written Final Submissions (if any)	Thursday, April 25, 2019
FEI and Mt. Hayes LP Written Reply Submissions	Thursday, May 9, 2019

**ORDER NUMBER**

**G-xx-xx**

IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc. and Mt. Hayes (GP) Ltd. as General Partner on behalf of Mt. Hayes Storage Limited Partnership

An Application for Approvals to Reorganize the Ownership Interests in the Liquefied Natural Gas Storage Facility at Mt. Hayes, near Ladysmith, British Columbia

**BEFORE:**

[Panel Chair]  
Commissioner  
Commissioner

on **Date**

**ORDER**

**WHEREAS:**

- A. On January 31, 2019, FortisBC Energy Inc. (FEI) and Mt. Hayes (GP) Ltd., as general partner on behalf of Mt. Hayes Storage Limited Partnership (Mt. Hayes LP) submitted an application (the Application) to the British Columbia Utilities Commission (the BCUC) for approvals under Sections 50, 52, 54, 61 and 71 of the *Utilities Commission Act* (the UCA) to reorganize the limited partnership arrangement (Proposed Reorganization) of Mt. Hayes LP, the beneficial owner of the Liquefied Natural Gas Storage Facility (LNG Storage Facility) located at Mt. Hayes, near Ladysmith, British Columbia;
- B. The Proposed Reorganization in the Application represents a modification of the limited partnership arrangement approved by the BCUC in Order G-109-11A;
- C. The Proposed Reorganization includes:
  - 1. an amended and restated limited partnership agreement (the Amended and Restated LP Agreement);
  - 2. an amended and restated facility lease (the Amended and Restated Facility Lease); and
  - 3. the extinguishment of the existing loan agreement, demand promissory note and general security agreement between FEI and Mt. Hayes LP in respect of the LNG Storage Facility;
- D. Under the Amended and Restated Facility Lease, FEI will continue to lease the LNG Storage Facility from Mt. Hayes LP;

- E. The Amended and Restated LP Agreement was filed on a confidential basis with the BCUC as part of the Application. The number of voting limited partnership units in Mt. Hayes LP owned by FEI may increase if other of the limited partners fails to fund its obligation to Mt. Hayes LP, and at the end of the Amended and Restated Facility Lease FEI may acquire all the limited partnership units of Mt. Hayes LP;
- F. At the termination of the Amended and Restated Facility Lease FEI will acquire beneficial ownership of the LNG Storage Facility, either through a purchase of the LNG Storage Facility assets from Mt. Hayes LP or an acquisition of the limited partnership units in Mt. Hayes LP of the other limited partners;
- G. After the Proposed Reorganization, the rates of FEI will continue to be determined on the basis that the revenue requirements of FEI be established with the LNG Storage Facility in rate base at its depreciated value, with the LNG Storage Facility in rate base at its depreciated value, with the LNG Storage Facility assets being subject to normal depreciation and earning a normal return on rate base. The rent payments from FEI to Mt. Hayes LP under its lease for the LNG Storage Facility, the distributions from Mt. Hayes LP to its partners and any tax paid on those distributions are to continue to be accounted for as non-utility transactions;
- H. BCUC Order G-XX-19 established a regulatory timetable for review of the Application; and
- I. The BCUC has reviewed the Application and considers that approval is warranted.

**NOW THEREFORE** the BCUC orders as follows:

- 1. FEI entering into a facility lease with Mt. Hayes LP substantially in the form of the Amended and Restated Facility Lease filed with the Application to replace the existing facility lease approved by the BCUC in Order G-109-11A by which FEI will continue to lease the LNG Storage Facility is approved. FEI is to file a copy of the executed Amended and Restated Facility Lease with the BCUC within 30 days of its execution.
- 2. A facility lease between Mt. Hayes LP and FEI substantially in the form of the Amended and Restated Facility Lease filed with the Application is approved as the rate that Mt. Hayes LP will charge FEI.
- 3. The variation by Mt. Hayes LP of the ownership interests of its partners in accordance with the Amended and Restated LP Agreement, and at termination of the lease of the LNG Storage Facility, is approved. All changes in the ownership interests in Mt. Hayes LP are to be reported within 30 days of their coming into effect.
- 4. The future disposition of the LNG Storage Facility by Mt. Hayes LP to FEI under the terms set out in the Amended and Restated Facility Lease at the termination of the lease is approved.
- 5. The rates of FEI are to be continued to be determined on the basis that the revenue requirements of FEI be established with the LNG Storage Facility in rate base at its depreciated value, with the LNG Storage Facility assets being subject to normal depreciation and earning a normal return on rate base.
- 6. The rent payments from FEI to Mt. Hayes LP under the Amended and Restated Facility Lease, distributions from Mt. Hayes LP to its partners and any taxes paid on those distributions are to continue to be accounted for as non-utility transactions.

**DATED** at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)  
Commissioner